THE

HISTORY

OF THE

LEGAL POLITY of the ROMAN STATE;

AND OF THE

RISE, PROGRESS, and EXTENT

OF THE

ROMAN LAWS.

By THOMAS BEVER, LL.D.

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MDCCLXXXI.



TO THE RIGHT HONORABLE

FREDERIC LORD NORTH,

FIRST LORD OF THE TREASURY,
CHANCELLOR OF THE EXCHEQUER,
CHANCELLOR OF THE UNIVERSITY OF OXFORD,
LORD WARDEN OF THE CINQUE PORTS,
AND
KNIGHT OF THE MOST NOBLE ORDER OF THE GARTER;

IN TIMES OF THE GREATEST NATIONAL DIFFICULTY
AND DISTRESS,
AN UPRIGHT AND FAITHFUL MINISTER TO THE
BEST OF SOVEREIGNS;
A ZEALOUS AND RESOLUTE
SUPPORTER OF THE CONSTITUTION OF HIS COUNTRY
IN CHURCH AND STATE;
AN ABLE JUDGE AND TRUE FRIEND OF USEFUL LEARNING;
AND, ABOVE ALL, AN HONEST MAN;

THIS
SMALL TOKEN OF ESTEEM AND VENERATION
IS MOST HUMBLY INSCRIBED,
BY
HIS LORDSHIP'S
MOST OBLIGED AND DEVOTED SERVANT,

THE AUTHOR.

ADVERTISEMENT.

WHEN this Work firſt went to the preſs, towards the cloſe of 1777, it was intended to have been publiſhed within the courſe of the following year, according to the Author's original manuſcript, as then prepared. But he had not proceeded far, before he found occaſion to enlarge his plan, and to conſult a variety of other authors, beſide thoſe mentioned in the *Introduction*. This unforeſeen taſk, together with his daily employment in a very laborious profeſſion, has protracted the publication to the preſent time. He is likewiſe under too juſt apprehenſions, that as the Work was often laid aſide for ſeveral ſucceſſive weeks or months, and only reſumed at certain intervals of leiſure, ſome facts may have been omitted, and ſome obſervations have ſlipt his memory, which might have rendered it more correct, and more worthy the attention of his readers. But, ſeeing his proſpects of a relaxation from buſineſs yet at a diſtance, and being unwilling to let it lie any longer upon his hands, he now ſubmits himſelf to the Public without any further apology.

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ERRATA.

Page vi. line 9. for *reason, we fear*, read *reason to fear.*
—— x. —— 18. for *Dutch*, read *Prussian.*
—— 43. note 27. line 10. for *plebum*, read *plebem.*
—— 80. —— 33. —— 2. for ,χ', read ,φ'.
—— 88. —— 9. for 323, read 21.
—— 142. —— 99. line 5. for *impunæ*, read *impuræ.*
—— 173. line 11. after *at*, insert *his.*
—— 253. —— 11. for *virtuous*, read *worthy.*
—— 346. marg. for 297, read 729.
—— 437. —— for 276, read 295.

INTRODUCTION.

Preliminary Obſervations.—Writers which have been chiefly uſed in the Courſe of this Work.

THE unparalleled events and revolutions of the Roman commonwealth afford ſome of the nobleſt topics of hiſtorical and political ſpeculation, that are to be found in the annals of mankind. Steady, juſt, and virtuous in her approaches to grandeur; proud, rapacious, and inſolent in her meridian; fickle, profligate, and ſervile in her decline; ſhe exhibits a picture, which, in one view, ſtrikes the contemplative beholder with the moſt rapturous delight; in another, with the moſt mortifying diſguſt; and in all, with aſtoniſhment. But this vaſt and puiſſant empire, which filled the whole antient world with the glory of its name, and the terror of its arms, is now totally diſſolved, "and "like the baſeleſs fabric of a viſion, hath left not a wreck behind." It exiſts only upon the records of paſt times, an uſeful and providential example to ſucceeding generations; in which much is to be ſeen to admire, much to emulate, and much to abhor.

The neceſſity of an accurate and comprehenſive knowledge of the Roman hiſtory and antiquities, to every one who wiſhes to ſtudy the laws with profit and effect, is a truth too ſelf-evident to require any ſpecial argument to enforce it. Hiſtory is the lamp of ſcience. Human inſtitutions, how wiſe ſoever in themſelves, muſt always be attended with ſome internal difficulties, ſome native obſcu-

rities, which can never be ſo well underſtood, as by a clear inſight into the peculiar ſituation and circumſtances of the ſtate itſelf, at the time they were framed. A due reſpect, however, to the character of the preſent inquiſitive and cultivated age, obliges me to ſuppoſe, that every learned and claſſical reader is already a competent maſter of that fertile ſucceſſion of bright and intereſting events, which are ſo copiouſly and eloquently diſplayed by a long ſeries of the ableſt writers, both of the antient and modern world. Upon this preſumption, I ſhall carefully avoid all needleſs repetitions of known facts; bringing ſuch only into view as may ſerve occaſionally to illuſtrate the ſubject of the enſuing work; namely, the hiſtory of the legal polity of this celebrated republic; the general wiſdom and equity of which, in ſpite of ſome particular blemiſhes, have laid a more ſolid foundation for the immortality of her fame, than the extent and ſplendor of her too often uſurped and ill-gotten dominions.

Where the moſt minute incidents, that concerned the fate of this illuſtrious people, have been diligently treaſured up in the memory of every novitiate in literature; where even the date of a year, or the ſcene of a battle, has been eſteemed of ſufficient importance to blow up the flame of critical contention; it might well be expected, that ſo noble a ſyſtem of laws, ſought out of the depths of human reaſon and ſound philoſophy; which contributed to civilize the manners, and improve the conſtitutions of the moſt flouriſhing countries of modern Europe; ſhould have been ſtudied with unremitting aſſiduity, by all perſons who aſpired to the character of elegant ſcholars and refined politicians. But, whatever juſtice may have been done to its real merits by other nations of the continent, ſorry we are to obſerve, that in theſe enlightened regions, where every other branch of polite knowledge is cheriſhed with the moſt tender regard, this of the Roman or civil law alone, has been too often careleſsly thrown aſide as

obſolete

obſolete and uſeleſs[1]; and even repreſented as dangerous to the civil polity of the nation.

The cauſes of theſe ſingular and inveterate prejudices[2] are ſtill more inexcuſable, as they cannot ariſe from any want of opportunities of inſtruction. Moſt of our public repoſitories of learning abound with books upon this ſubject, to a degree of ſuperfluity; and if ſome few only of the beſt of theſe were brought out of their preſent obſcurity, and peruſed with the attention they richly deſerve, they would be found to contain a moſt ample fund of edifying and curious erudition.

Of the writers.

As it is a point therefore of no ſmall conſequence, eſpecially to young ſtudents, to be well acquainted with the proper ſources of information, we ſhall begin with a ſhort detail of the various writers, upon whoſe aid we have chiefly relied in the following hiſtory; not indeed with a view of entering into a critical examination of their reſpective merits, for that would require a volume of itſelf, but only of removing ſome of thoſe difficulties which too commonly obſtruct the avenues of ſcience, and of aſſiſting the progreſs of the curious reader through the more intricate receſſes of it. The preſent ſubject, having been hitherto very ſuperficially underſtood in this country, requires ſome powerful ſupport, to juſtify its claim to the notice of the public. We have therefore carefully traced it to the fountain-head, and occaſionally ſubjoined ſuch extracts from thence, as ſeem moſt ſuitable to the uſes of illuſtration; in hopes of

[1] It is ſaid of the famous Lord Chief Juſtice Hale, that "He ſet himſelf to the ſtudy "of the Roman law, and though he liked "the way of judicature in England by juries, "much better than that of the civil law, "where ſo much was truſted to the judge, "yet he often ſaid, that the true grounds "and reaſons of law were ſo well delivered "in the Digeſt, that a man could never underſtand law as a ſcience, ſo well as by "ſeeking it there; and therefore lamented "much, that it was ſo little ſtudied in England." Burnet's life of Sir M. Hale, p. 24.

[2] Theſe have been already examined more at large in a Diſcourſe on the Study of Juriſprudence, printed at Oxford in 1766.

giving fuller ſatisfaction to thoſe, who are capable of reliſhing the elegances of the learned languages, and of feeling the force of original authority.

Hiſtorians. As to the antient writers, both Greek and Latin, who are uſually diſtinguiſhed by the honorable title of Claſſics, their well-known works and characters give a full ſanction to their credibility, without the help of any acceſſory proofs to eſtabliſh it. We have only to lament the very imperfect and mutilated ſtate in which by far the greateſt part of them have deſcended to poſterity.

Dionyſius of Halicarnaſſus. Among the Greeks, the firſt is Dionyſius of Halicarnaſſus, who wrote his hiſtory in the time of Auguſtus, and, without diſparagement to the reſt of his fraternity, is univerſally allowed to have given the beſt account of the antient conſtitution of Rome, of any author now extant. His work conſiſted originally of twenty books, of which no more than the eleven firſt have reached the preſent age; ſo that after the beginning of the fourth century from the foundation of Rome, we are entirely deprived of the aſſiſtance of this intelligent guide. His works have paſſed through the hands of various editors, the laſt of whom was the learned Dr. John Hudſon, keeper of the Bodleian library, to whoſe edition, printed at Oxford, 1704, reference has been always had, whenever it has been neceſſary to make uſe of his teſtimony. Neither ought we to omit the elegant and accurate tranſlation of the ſame work, by Edward Spelman, Eſq; printed at London, 1758, wherein the true ſpirit of the author has been admirably preſerved; and which, by the addition of many judicious annotations, is become almoſt equally valuable with the original.

Dio Caſſius. The learned world is not leſs unfortunate in the defective remains of Dio Caſſius, who wrote the hiſtory of Italy and Rome, in eighty books, from the earlieſt times, to the reign of Alexander Severus, under whom he enjoyed the high offices of ſenator and conſul, and, what was ſtill more to his honor, the perſonal friendſhip of

that virtuous and excellent prince. His firſt thirty-five books are entirely loſt, except ſome detached fragments, from which few matters of conſequence can now be collected. The moſt entire, but even thoſe not without ſome conſiderable deficiencies, are from the thirty-fifth to the fifty-fourth. To make ſome amends, however, theſe include one of the buſieſt and moſt important periods of the whole republic, from the year of Rome 686 to 744. The ſubſequent parts have been in ſome meaſure reſtored by the epitome of John Xiphilin, patriarch of Conſtantinople in the eleventh century, which is generally eſteemed by the learned as a very correct and faithful ſupplement. The edition here uſed is the celebrated one publiſhed by Herm. Sam. Reimar, Hamburgh, 1750.

Many occaſional obſervations have likewiſe been ſelected from the Lives of Plutarch, the moſt valuable treaſure of biographical anecdotes that ever yet enriched the world of literature. The lateſt edition of this work is that printed at London, 1729. Plutarch.

Had the hiſtories of Livy and Tacitus been tranſmitted to us in the ſame perfect ſtate, in which they certainly came out of the hands of their reſpective authors, we ſhould have had leſs to regret from the mutilations of the Grecian writers; but theſe likewiſe have been equal ſufferers from the cruel ravages of time and barbariſm. The fidelity and accuracy of their relations; the preciſion and juſtneſs of their political remarks; the calm and ſteady ſpirit of true liberty which breathes through all their ſentiments, while they heighten the value of theſe broken remains which are yet preſerved, increaſe our concern for the other parts, which are now loſt beyond all hope of recovery. Theſe precious monuments of true genius, imperfect as they are, together with all the other compilers of the Roman ſtory, of various characters and authority, have been given of late years to the public in one entire body, by the liberality Roman writers.

liberality of the Baron of Holberg, a reſpectable German nobleman; accompanied with a ſeries of medals, which are of infinite uſe in helping the memory, and fixing the many fleeting and unconnected facts of diſtant times in the mind of the reader. Theſe firſt began to make their appearance from the preſs at the univerſity of Heidelberg, in the year 1743, and were completed in 1748.

Various are the uſes we have made of theſe rich treaſures of ancient learning; and yet, after the moſt diligent examination, there is great reaſon, we fear, that many eſſential parts of the ſubject are ſtill very imperfectly known, and are now paſt the hope of being ever ſufficiently illuſtrated, to ſatisfy the ſanguine curioſity of the true lovers of antiquity. Theſe defects, however, are not barely owing to the caſual and irremediable chaſms in the writings of ſuch remote ages, but to the partiality or timidity of the authors themſelves; who, in all times of violence, eſpecially after the full eſtabliſhment of Imperial tyranny, generally wrote in manacles; and ſeldom dared to utter any other truths, than ſuch as either flattered the ambition, or favoured the intereſt, of the ſovereign power. This was too juſt a matter of complaint, even under the reign of Auguſtus; which, though in fact an abſolute monarchy, was certainly diſtinguiſhed by many ſtrong marks of mildneſs and liberality, eſpecially when compared with the government of the majority of his ſucceſſors. As an inſtance of the narrow ſpirit then prevailing (which indeed was much more the character of the age than of the prince), it is related of Claudius Cæſar, that being in his youth a pupil of Livy, and undertaking to compoſe a hiſtory of the late times, under the inſpection of his incomparable tutor, he was obliged to deſiſt, from an apprehenſion of drawing too ſtriking likeneſſes of ſeveral perſons then in power; and from the frequent checks given him by his mother and grandmother, who were both of the family and

faction of Antony [3], and were fearful leſt he ſhould drop any expreſſion in favor of that party, which might provoke the reſentment of the Imperialiſts.

Tacitus and Dio Caſſius were both ſenſible of the many obſtacles to that manly freedom of ſentiment, which is the native ornament of every honeſt and faithful hiſtorian; and have deſcribed the temper of the ſame times, in ſo maſterly a manner, as to call for the particular attention of all thoſe who are fond of inveſtigating the real foundations of hiſtorical verity [4].

One of the well-known conſequences of the battle of Actium, was the final deſtruction of the republican form of government, whereby the whole adminiſtration of political affairs was thrown into a new channel, and centered ultimately in the emperor and his particular favorites. Upon this memorable event the Greek hiſtorian very ably remarks: "That though the preſent change in the ſyſtem "of policy was in fact become neceſſary, yet it was attended with "this ſenſible inconvenience, that the public tranſactions of the "times could never be recorded with the ſame degree of certainty as "heretofore. Formerly all affairs which concerned the intereſt of "the ſtate at large, wherever they originated, were laid before the "ſenate and people, ſo that every member of the community had "it in his power to obtain a perfect knowledge of them; and "thus the truth was ſure to be diſcovered, either from the co-

[3] "Hiſtoriam in adoleſcentia, hortante "T. Livio, Sulp. vero Flavo etiam adjuvante, "ſcribere aggreſſus eſt. Initium autem "ſumpſit hiſtoriæ poſt cædem Cæſaris dicta-"toris. Sed et tranſiit ad inferiora tempora, "cœpitque a pace civili: cum ſentiret neque "libere, neque vere ſibi de ſuperioribus tra-"dendi poteſtatem relictam, correptus ſæpe "et a matre et ab avia." Suet. in Claud. 41.

[4] "Poſt conditam urbem 720 prioris ævi "annos multi auctores retulerunt, dum res "populi Romani memorabantur, pari elo-"quentia. Poſtquam bellatum apud Ac-"tium, atque omnem poteſtatem ad unum "conferri pacis interfuit, magna illa inge-"nia ceſſere. Simul veritas pluribus modis "infracta. Primum inſcitia reipublicæ, ut "alienæ, mox libidine aſſentandi, aut rurſus "odio adverſus dominantes. Ita neutris "cura poſteritatis inter infenſos vel ob-"noxios." Tac. Hiſt. i. 1.

"temporary

" temporary writers, or from the public monuments; even though " ſome among them might be induced, either by fear or favour, by " love or hatred, to diſguiſe plain facts with fictitious colours. But " now politics were converted into myſteries; ſo that if they ſome- " times happened to be divulged, they were little regarded, for " want of opportunities of examining their true grounds; the em- " perors and their friends, being always ſuſpected of directing every " thing at their own pleaſure. Hence many facts were reported as " true, that never had an exiſtence; many real ones were paſſed over " in utter ſilence; and the generality were related in a manner very " different from that in which they actually happened. Add to theſe, " the immenſe extent of the empire, and the vaſt variety of buſineſs " in agitation at the ſame point of time in parts far diſtant from each " other, ſo that it was impoſſible to preſerve the memory of it en- " tirely; ſome being only within the knowledge of the agents them- " ſelves; and ſome never known to have been done at all." The author, therefore, very candidly confeſſes, that " he takes the tranſ- " actions of theſe ages merely upon the credit of preceeding writers, " without engaging for their veracity; reſerving to himſelf the right " of private opinion, and of ſetting facts in a new or different light, " whenever he ſhall ſee ſufficient reaſon to juſtify his conjectures [5]."

[5] Ου μεντοι και ὁμοιως τους προσθιν τα μεν παντα πραχθηναι δυναται. προλεγω μεν γαρ ες τε την βουλην και ες τον δημον παντα, και ει ποθεν που συμβαιη, ισιφιρετο· και δια τουτο πολλα τε αυτα εμαθομεν, και πολλοι συνεγραψαν. Καιτοι τουτου και ἡ αληθεια αυτων, ει και τα μαλιστα και φοβῳ τινι και χαριτι, φιλιᾳ τε και ἐχθρᾳ τισιν ἐξῃθη, παρα γουν τοις αλλοις τοις τα αυτα γραψασι, τοις τε ὑπομνημασι τοις δημοσιοις, τροπον τινα ἐυρισκετο. ἐπειδη τε χρονῳ ἐκεινα τα μεν πλειω κρυφα και ἀπορρητα γιγνεσθαι πρεπει. ει δε που και τινα δημοσιευθειη, αλλα ἀνεξελεγκτα γε οντα απιστειται. και γαρ λεγεσθαι και πραττεσθαι παντα προς των αει κρατουντων τε παραδυναστευοντων σφισι βουλημαθ' ὑπολευεται. και καθ' ἑαυτο τουτο πολλα μεν ὑ γιγνομενα, θρυλλειται, πολλα δε και παυ συμβαινοντα, αγνοειται· παντα δε, ὡς ειπειν, αλλως πως ἡ ὡς πραττεται, διαθρειται. Και μεντοι και το της ἀρχης μεγεθος, το, τι των πραγματων πληθος δυσχερεστατην ακριβειαν αυτων παρεχεται. ἐπειτε γαρ τῃ Ρωμῃ συνεχεια, και παρα τῳ ὑπηκοῳ αυτης πολλα, προς τε το πολεμιον, αει και καθ' ἡμεραν, ὡς ειπειν, γιγνεται τινα, περι ὧν το μεν σαφες ουδεις ἐαδιως, ἐξω των προσηκοντων αυθις, γιγνωσκει. πλειστοι δ' ὁσοι ουδ' ακουουσι την ἀρχην ὁ, τι γεγονεν. ὥθεν περ και ἐγω παντα τα ἐξης, ὁσα γε και αναγκαιον ἐστιν ειπειν, ὡς που και διειλημμαι φρασω, εἰτ' οντως ὀντων, εἰτε και ἑτερως πως ἐχει. προσεστι μεντοι τι αυθις και της ἐμης δοξασιας, ἐς ὁσον ενδεχεται, ἐν ὁις ἀλλο τι μαλλον ἡ το θρυλλουμενον, ηδυνηθην ἐκ πολλων ὧν ἀκηκοα, ἡ και ἡκουσα, ἡ και ειδον, τεκμηραθαι. Dio Caſſ. liii. 19.

The

The ſame indulgence which this cautious writer has claimed for himſelf, will, it is hoped, be readily granted to the preſent adventurer in the field of literature, where difficulties, after the intervention of above fifteen centuries, muſt be allowed to have increaſed in more than a tenfold proportion. In the midſt of theſe acknowledged obſcurities, and the want of ſome unerring criterion of truth, all he can do is to collect the various facts and circumſtances relating to his ſubject, in the imperfect ſtate in which he now finds them; and to form ſuch concluſions as may be beſt warranted by a general review of the whole.

The works of the poets and orators may be conſidered as very uſeful and inſtructive comments upon the moſt ſtriking tranſactions of the times in which they lived; the aid therefore of the moſt eminent of theſe have been occaſionally called in, according to the exigency of the ſubject.

Civilians.

We ſhall now recommend to the reader's notice ſome of thoſe writers who, having confined their reſearches to juridical ſubjects alone, come under the particular denomination of Civilians. From this claſs we mean only to ſelect a few of the moſt celebrated, who, being at the ſame time both conciſe and comprehenſive, will anſwer all the preſent purpoſes of inſtruction, eſpecially to young beginners; and, which is a point of no ſmall conſequence, will ſave a great deal of unneceſſary reading.

Pomponius.

In the front of theſe ſtands the fragment of the Enchiridion of Pomponius, a lawyer of diſtinguiſhed character, who flouriſhed ſome time in the ſecond century, but in what reign is rather uncertain [6]. This is the only *antient* hiſtory of the Roman law now in being, and owes its eſcape from oblivion to the care of Juſtinian, who has inſerted it in the Digeſt [7]. It is ſhort, but ſatisfac-

[6] Gravinæ Origines Juris, 1. 91. & Hein. vol. iii. p. 66, & ſeq. edit. Genev. 1744, &c.

[7] Digeſt, lib. 1. tit. 2. leg. 2.

tory as far as it goes; containing a ſummary of the moſt memorable epochas of the legal and political conſtitution of Rome, from Romulus to Auguſtus; of the magiſtrates and principal officers of ſtate; and of the celebrated lawyers and orators, ſo often mentioned with honor by the claſſic authors, eſpecially Cicero and Horace. This piece has been publiſhed many years ſince in Holland, with a judicious commentary by Vander Meulen; and likewiſe by Bynkerſhoek, another equally celebrated advocate of the ſame country, in a work intitled, "Prætermiſſa ad L. ii. D. de Or. Jur. Operum, vol. iii."

Hoppius. The ſubject is purſued and brought down to later times by Hoppius, in his "Præcognita juris," prefixed to his notes upon Juſtinian's Inſtitutes; and in a more particular manner by Gravina, in his "Origines juris civilis;" the beſt edition of which is that publiſhed at Leipſic, by Maſcovius, a late eminent profeſſor in that univerſity.

Gravina.

Heineccius. To theſe may be added the "Hiſtoria juris civilis" of Heineccius[s], a Dutch writer of extenſive learning and abilities, who, by his nice ſkill in criticiſm, has thrown ſome very important lights upon the hiſtory of thoſe times and events of which we are now going to treat, hitherto but imperfectly underſtood.

England, though it has never yet failed to produce a ſucceſſion of great and able Civilians, who have done the higheſt honor to their profeſſion, both as advocates and ſtateſmen, has contributed but little to the cultivation and advancement of this branch of knowledge, by its writers. The truth is, the ſtudy of the Roman law has been ſo little countenanced by the public in general, that few men of learning have choſen to exerciſe their talents in a field, where the proſpect either of reputation or riches is ſo very barren and unpromiſing. Among our own countrymen, one of the moſt cele-

[s] Operum, vol. iv.

brated

brated in this line, is Dr. Arthur Duck[9], who, in a Latin treatiſe, intitled, "De uſu et authoritate juris civilis Romanorum per domi-"nia principum chriſtianorum," has given a ſhort and diſtinct account of the canon and feudal, as well as of the civil, law, and of their after-eſtabliſhment in the ſeveral countries of Europe; a work containing a great variety of intereſting matter, and particularly uſeful on account of the number of authorities which he has ſelected with great diligence from former writers, and inſerted in the margin. To this may be added another ſhort treatiſe in the French language by M. Claude Joſeph de Ferriere, ſince tranſlated into Engliſh, together with the foregoing, and printed at London, 1724. Some later authors likewiſe, of diſtinguiſhed character, might have been mentioned on this occaſion; but as they have generally paſſed over the hiſtorical parts of the ſubject in ſlight preliminary diſcourſes, merely by way of introduction to thoſe legal matters which were the grand objects of their inquiries, they do not belong to that order of writers to whom our preſent obſervations are confined[10]. Arth. Duck.

Upon the whole, the author finding ſeveral corners of this wide region unexplored, has ventured out in ſearch of treaſures which ſeem yet concealed from the view of his countrymen, in hopes of preſenting them with a more complete and exact account of this famous ſyſtem of legal polity, than has hitherto appeared in the Engliſh language.

The volume now reſpectfully ſubmitted to their peruſal (with which his inquiries might properly end) includes the whole hiſtory of the Roman laws, ſo long as they preſerved their influence over this

[9] This learned writer flouriſhed in the reign of Charles I. was advocate in the court arches, and enjoyed ſeveral very reſpectable offices in his profeſſion.

[10] For a more particular account of theſe, vide Diſcourſe on Juriſprudence, &c. p. 33. 35. 37. in the notes. Some others will be quoted in the courſe of this work, which have been omitted above, to avoid prolixity; but will be taken notice of as they occur.

immenſe and variable empire. In the twelfth century, however, they revived in a new ſhape; not as an uniform body, to be received in any given country by the force of their original authority; but as a plentiful mine of miſcellaneous and valuable materials, for the common uſe of all mankind. In this ſtate, they became connected with the feudal and canon laws, which were generated from the barbarity and ſuperſtition of the intermediate ages; while the weſtern world was held in a comfortleſs ſuſpence between Paganiſm and Chriſtianity. Every conſtitution of modern Europe being founded upon an union of theſe three celebrated ſyſtems, it will be a work of no leſs utility than entertainment, to follow them in their progreſs to theſe later times, and to point out their effects upon the government of thoſe countries which have been pleaſed to adopt them. In the courſe of this purſuit, due attention will be paid to their various operations in the different parts of the Britiſh empire, eſpecially in the maritime and eccleſiaſtical courts, wherein the civil and canon laws more immediately prevail, under the authority of the legiſlature. Should the preſent attempt, therefore, have the good fortune to merit a favourable reception from the Public, the remainder will be made the ſubject of a Second Volume, as ſoon as ever the Author's profeſſional engagements will afford him leiſure. In the mean time he takes this opportunity of acknowledging his obligations to ſeveral of his learned friends, to whoſe judicious hints and corrections he aſcribes whatever little reputation his undertaking may preſume to expect.

THE HISTORY OF THE LEGAL POLITY of the ROMAN STATE; AND OF THE RISE, PROGRESS, and EXTENT OF THE ROMAN LAWS.

BOOK I.

The Origin of the Roman State, to the Extinction of the Regal Government by the Expulsion of Tarquin.

CHAP. I.

Origin of the Roman People—Four principal Periods of the Roman Constitution—Romulus—his Rise—Form of Government—Civil Institutions—Tribes and "Curiæ."—Orders of the State—Patricians—Plebeians—Patrons and Clients—Senators—Knights.

Origin of the Roman people.

RESEARCHES into the origin of antient nations are liable to endless doubts, and the few discoveries ever made, are but a poor recompence for the toil of the inquiry. The most

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moſt therefore that can be affirmed, with any degree of probability, of the firſt inhabitants of Italy, is, that they were compoſed of divers hordes or tribes of Greeks, the overflowings of their native habitations, who migrated, in very early days, into the ſouthern parts of the Italian continent; which, from thence, aſſumed the name of "Magna Græcia." Theſe brought with them their own laws and cuſtoms, which the connoiſſeurs in antiquity pretend are chiefly Arcadian. According to the general practice of thoſe remote and ſimple ages, they were divided into a number of ſmall, independent communities, which we uſually call kingdoms; and to which we very improperly annex the ideas of extent, dignity, and power. From the refuſe of theſe aroſe, in due time, the renowned empire of the Romans. The few maxims of policy which they imported from their reſpective parent countries, were afterwards incorporated in the general body, and made a part of their written, or cuſtomary law.

Periods of the Roman Law.

To afford the reader convenient reſting-places in his travels through the following inſtructive field of hiſtory, we ſhall divide it into four principal periods, at which thoſe grand changes happened, that moſt materially affected the conſtitution of Rome, and occaſioned the ſeveral different appearances in her legal ſyſtem.

A. U. C. 244. A. N. C. 507.

The firſt of theſe begins with Romulus, and ends with the expulſion of Tarquin [1].

The ſecond opens with the eſtabliſhment of the conſular government; but the period of its concluſion is more difficult to be aſcertained, with any degree of preciſion, as the republican form was not aboliſhed by any open or declarative act of the ruling power, but

[1] In fixing the dates of theſe periods, and of the other events which will hereafter be occaſionally alluded to, we have followed the vulgar chronology, as we find it generally adopted by the antient writers; though, during the regal period at leaſt, there is the greateſt reaſon to ſuſpect its authenticity. Sir Iſ. Newton's Objections, &c.

gradually

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gradually expired under the weight of dictatorial and triumviral deſpotiſm. As a line, however, muſt be drawn ſomewhere, it may properly enough be fixed at the time when Julius Cæſar, having paſſed the Rubicon, made himſelf maſter of all Italy, and acquired a ſovereign controul over every other branch of the conſtitution. A. U. C. 704. A. N. C. 48.

The third comprehends the whole of the Imperial government, while Rome continued to be the principal ſeat of empire.

The fourth commences with the removal of it from thence to Byzantium, by Conſtantine; includes the famous reformation of the Roman laws by Juſtinian; and extends to the reign of the German emperor Lotharius, who is ſuppoſed to have revived and introduced the knowledge of the Civil Law into the weſtern parts of Europe. A. D. 330. A. D. 1137.

First period. Romulus.

The Roman hiſtorians and poets, to give a greater air of dignity to their republic, and to excite a veneration for its name, have amuſed their readers with a variety of pompous and romantic accounts of their founder, Romulus, endeavouring to impoſe him upon the world, for ſomething more than mortal [a].

An obſcure and myſterious origin contributed much to this deception, and was the real cauſe of a conſiderable part of his future good fortune. Being deſtitute of any viſible terreſtrial father, he (or his flatterers for him) boldly adopted a Deity, and popular credulity ſupplied the defect of truth. Such impoſitions indeed were commonly practiſed by the petty lawgivers of theſe dark heatheniſh ages; and though they were not leſs the reſults of cunning than of enthuſiaſm, yet when ſtrenuouſly exerted in ſubduing the ſtubborn hearts of ſavages, and in improving the arts of ſocial life and civil policy, they were not only innocent, but laudable.

[a] Plut. in Rom.

" Quin et avo comitem ſeſe Mavortius addet
" Romulus; Aſſaraci quem ſanguinis Ilia mater.
" Educet, viden' ut geminæ ſtant vertice criſtæ,
" Et pater ipſe ſuo ſuperum jam ſignat honore?"

VIRG. ÆN. vi. 777.

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We, however, who live in more remote times, and are aliens from the Roman name and government, having no intereſt in humouring ſuch extravagant and ſuperſtitious conceits, may venture to draw him in more modeſt and natural, though not leſs ſtriking, colours; not as the offſpring of a heavenly progenitor; not as the heir apparent of a rich and potent kingdom; but as a deſerted foundling, reſcued from a lingering and cruel death, by the tender compaſſion of an humble peaſant, and nurſed up in the obſcurity of a cottage, till an unexpected accident brought him forth into a more public ſcene of action, and happily reſtored him to his friends and family.

In thoſe regions of unambitious ſimplicity, where the greateſt prince was little elſe than the richeſt herdſman, royal appanages for the ſupport of the heir to the throne were not in uſe. The beſt and only inheritance was activity and fortitude. Amply endowed with theſe manly qualities, the young adventurer ſallied forth into the world to be the author of his own fortune; to lay the foundation of a little kingdom of his own; which, as from an imperceptible grain, ſprang up gradually into a moſt luxuriant tree, and covered an immenſe portion of the earth with the ſhadow of its branches. To ſay the truth, when thus arrived in after-times to the ſummit of human grandeur, under the actual protection of the unknown God, we may eaſily pardon the pious ignorance of unenlightened pagans, for aſcribing that rapid ſeries of ſucceſſes to the unremitting influence of their tutelary Quirinus, the only cauſe, within the compaſs of their corrupt ſyſtem of religion, adequate to ſuch ſupernatural effects.

Whatever opinion this enterpriſing hero might really entertain of his own original, he ſhewed himſelf no more than a man of common ſenſe and penetration; he obſerved the dictates of ordinary policy, and purſued ſuch methods only as the preſent exigency of his circumſtances ſuggeſted. To give life and vigor to his infant colony,

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colony; his firſt ſtep was to make his camp an aſylum for all the exiles and refugees from the neigbouring ſtates; a wild band of lawleſs ruſtics, who had forfeited all right of protection under their own native governments, and were therefore eaſily enticed to his banner, much more by an admiration of his actual courage, than by a veneration for his ſuppoſed divinity. Thus ſuddenly and accidentally collected together, the utmoſt extent of their view probably reached no further, in the beginning, than to live at free quarter upon the country, and to obtain ſome ſettled habitations for themſelves, in exchange for thoſe from which they had been driven. The firſt principle, therefore, of their aſſociation was purely that of mutual ſecurity.

Being, however, totally unacquainted with the myſteries of civil policy, and void of every idea of any regular body of laws, their general became the moſt obvious and natural object of their reſpect and obedience. The confidence which their defenceleſs ſituation obliged them at firſt to repoſe in him, eaſily grew into habit, and gradually inclined them, without any particular deſign or forethought, to ſubmit to his ſole will and direction.

This ſtate of their primitive conſtitution (if it may deſerve the name) is clearly ſet forth by Pomponius in the following deſcription: "Initio civitatis noſtræ populus ſine lege certâ, ſine jure certo, "primum agere inſtituit, omniaque *manu a regibus gubernaban-* "*tur*[1]." But when theſe vagabonds found themſelves ſecure in their new ſettlement, which was at firſt little more than the circle of their fortification, they then began to feel their own ſtrength, and to aſpire to ſome portion of that liberty, which, their own reaſon might tell them, was the natural inheritance of the moſt forlorn

[1] D. 1. 2. 2. 1. And again, "Quod ad magiſtratus at- "tinet, initio civitatis hujus conſtat, reges "omnem poteſtatem habuiſſe." Ib. § 14. "Nobis Romulus ut libitum imperitave- "rat." Tac. Ann. 3. 26.

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ruſtic. From the plan of policy ſoon afterwards eſtabliſhed, it is evident, that, notwithſtanding the idea we may be apt to entertain of the arbitrary power, the *manual government* (if I may ſo call it), of the Roman kings, it was really no more than what was very uſual among the petty princes of antient Greece, and likewiſe the feudal chieftains of later ages. Theſe were indeed abſolute enough at the head of their armies, but when they had once obtained an eſtabliſhment by their ſwords, and were in firm poſſeſſion of the fruits of their victories, their fellow-adventurers claimed a ſhare in the civil government, and the imaginary phantom of deſpotiſm inſtantly vaniſhed.

It appears, likewiſe, from the event, as well as from the ſubſequent diviſion which Romulus himſelf made of his followers, that he was not only convinced of the juſtice, but of the utility, of admitting them all to a participation of power in his new commonwealth; and of framing a regular ſcheme of legiſlation with their expreſs conſent and approbation[4]. There can therefore be no doubt, upon the whole, that the original conſtitution of Rome was a mixed or limited monarchy; and that the ſovereign power, the "dominium "eminens," as the civilians very properly call it, always reſided in the collective body of the people[5].

We are informed by a very learned and faithful antiquary[6], that as ſoon as the building of the city was finiſhed, for the purpoſe of promoting which he had been principally induced to take upon him the chief command, he ſummoned the whole people together; and having explained to them the neceſſity of ſome fixed and uniform ſyſtem of polity, he made a voluntary offer of relinquiſhing the ſovereign authority, which he had hitherto exerciſed, and of

[4] "Rebus divinis rite perpetratis, vocataque ad concilium multitudine, quæ coalescere in populi unius corpus nulla re, præter "quam legibus poterat, jura dedit." Liv. l. 8.

[5] Grav. de Imp. Rom. 14.

[6] Dion. Hal. 2. 3—6.

ſubmitting

ſubmitting to any form of government that ſhould be the moſt acceptable to themſelves. In conſequence of this truly patriotic and diſintereſted propoſal, they wiſely agreed upon a free monarchy; and, as a reward for this generous act of condeſcenſion, with one voice elected him king.

Tribes and "Curiæ."

Romulus being thus raiſed to this honorable pre-eminence by the unanimous ſuffrages of a free and grateful people, began the exerciſe of his new power by diſtributing his ſubjects (whoſe effective force even then conſiſted of no more than three thouſand foot and three hundred horſe[7]) into three tribes; every tribe into ten "curiæ," or wards[8]; and each "curia" into ten "decuriæ." Over each of theſe diviſions and ſubdiviſions, he placed a commanding officer, called reſpectively "Curio" and "Decurio[9];" and over the whole, a ſuperior, or primate, diſtinguiſhed by the honorable title of "Curio "Maximus." Having divided the lands into thirty ſhares, he aſſigned one to each "curia," firſt excepting ſuch a part as he thought neceſſary for the uſe of the public, and for the ſupport of the temples. Upon the incorporation of the Sabines, theſe new allies were likewiſe diſtributed among the tribes and "curiæ," but without any augmentation of the number of either.

It may not be improper, in this place, to call to the reader's attention, an inſtitution of the antient kingdom of Peru, mentioned by a celebrated hiſtorian of that country[10], and borrowed from thence by our modern Engliſh writers[11], which bears a ſtriking reſemblance, in ſeveral intereſting particulars, to that of which we are now ſpeaking. This was the civil diviſion of the four great provinces of the empire, made by the ſecond emperor of the family of the Incas, into ſmall parcels, conſiſting each of ten families, and diſtinguiſhed by a name

[7] Dion. Hal. 2. 2.
[8] Dion. Hal. 2. 7. D. 1. 2. 2. 2. Grav. O. J. 1. 10.
[9] Dion. Hal. 2. 7.
[10] Garcilaſſo de la Vega.
[11] Univ. Mod. Hiſt. vol. 39. p. 14. edit. 8vo.

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in the Peruvian language anſwering exactly, as it is ſaid, to the Roman "decuria." Five of theſe conſtituted a higher claſs; two of the latter, a third, called an hundred; and ten hundreds made the great claſs, of a thouſand. Each of theſe had its reſpective ſupreme officer, whoſe duty it was to adminiſter juſtice within his own juriſdiction; and to take care that none of the people committed to his charge ſhould want the neceſſaries of life, or the means of induſtry. What did even Alfred more, when he divided this kingdom into hundreds, counties, and ſheriffdoms, and eſtabliſhed that ſeries of judicature which ſubſiſts among us at this day?

Theſe extraordinary inſtances of policy are here mentioned, to ſhew what natural analogy will ever appear in all human governments, whoſe founders were actuated by mere common ſenſe, and the dictates of natural reaſon; though, on account of their extreme remoteneſs from each other, both in time and ſituation, they muſt have been quite out of the reach of all poſſible imitation.

The Roman "curiæ" anſwer, in ſeveral particulars, to the modern pariſhes; being diſtinguiſhed from each other by certain boundaries, and having every one its own temple, and prieſt to officiate in the public worſhip. The aſſembly of the "curiæ," was called "comitia curiata;" which were a kind of general committee of the whole nation. They acted by their votes, in a manner that will be explained more fully upon a future occaſion; and whatever was firſt approved by a majority among themſelves, was referred afterwards to the ſenate for its final ſanction. The buſineſs peculiarly aſſigned to the province of the "curiæ" was, to elect magiſtrates, to confirm laws [12], and to determine upon war and peace, if the king pleaſed to conſult them upon the ſubject; but in all theſe caſes their will was entirely dependent upon the ſuperior will of the ſenate [13].

[12] "Leges quaſdam ipſe curiatas ad populum tulit: tulerunt et ſequentes reges." D. 1. 2. 2. 2.

[13] Τῳ δε δημοτικῳ πληθει τρια ταυτα επιτρεψειν, αρχαιρεσιαζειν τε και νομους επικυρουν και περι πολεμου διαγνωσκειν, ὁταν ὁ βασιλευς ἐφῃ, ουδε τουτων ἐχοντι την ἐξουσιαν ἐπιλαπτον, αν μη και τῃ βουλῃ ταυτα δοκῃ." Dion. Hal. 2. 14.

By

CHAP. I.

By an equal and popular diſtribution of the right of ſuffrage in the "comitia," all orders of the people were indiſcriminately mixed, and the meaneſt plebeian was as much a part of the legiſlative body, as the greateſt ſenator or patrician. But, notwithſtanding this, the adminiſtration of juſtice, both in criminal and civil cauſes, was reſerved to the king, who took cognizance himſelf of all matters of the greateſt moment, and referred thoſe of a more trifling nature to the ſenators and patricians, who were a ſort of coadjutors [14]. From the kings it was afterwards transferred to the conſuls, and continued abſolutely in their hands, till the criminal part of their juriſdiction was reſtrained by the Valerian law, and the civil, by the famous law of Terentius Arſa, both of which will be mentioned in their proper places. The exerciſe of this judicial power was indeed quietly ſubmitted to, and gave no umbrage to the poor plebeians, who moſt probably had but little worth contending for; who were more in danger of foreign than domeſtic enemies; and who, therefore, did not build their ſecurity ſo much upon the law, as upon the ſword, to the uſe of which every Roman was, in that age, trained from his infancy.

In effect, the whole force of this little nation was concentered in one compact body of well-diſciplined militia, the ſure refuge of every free people; the genuine ſpirit of epidemical bravery being thus kept in perpetual vigor, by affections of the moſt tender and intereſting nature; as thoſe muſt ever be eſteemed, when the ſoldier is at once the huſband, the father, the friend, and the patriot. And to this excellent policy the Romans owed, not only their numerous

[14] Τους μεν ευπαλριδας—αρχειν, και δικαζειν, και μιθ' ἑαυτου τα κοινα πρατλειν, επι των κατα πολιν ἐργων μενοντας. Ib. § 9. And again, Των δι αδικηματων τα μιγιστα μεν αυτον δικαζειν, τα δι ελατλονα τοις βουλευταις επιτρεπειν, προσεμειον ἱνα μηδεν γενηται πιρι τας δικας πλημμελες. Ib. § 14.

conqueſts,

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conqueſts, but alſo their domeſtic ſecurity; and more than once, their recovery from the verge of ruin and deſpair[15].

Orders of the Roman ſtate.

After this general diviſion of the people into tribes and "curiæ," Romulus found it neceſſary to conſider them in a cloſer light, according to their reſpective circumſtances, either of birth, wealth, wiſdom, or experience. Such as were moſt eminent for any of theſe qualifications, he honored with the higheſt dignities and offices of the ſtate[16]; conferring upon them the reſpectable title of

Patricians.

Patricians. By this he meant to remind them, that they were to conſider themſelves as the fathers of the republic, and as the

Plebeians.

patrons of the poor and ignorant Plebeians; who were to be employed only in the lower and more laborious offices, ſuch as were better ſuited to the inferiority of their ſtation and capacity.

Patrons and Clients.

From this origin aroſe the relation of Patrons and Clients, ſo famous in the future ages of the commonwealth; whereby a perpetual alliance was eſtabliſhed between the two orders, which was almoſt as indiſſoluble as if formed by nature. The many comfortable conſequences of this connexion to the poor, was a ſufficient reaſon for the humanity of thoſe times to indulge the plebeians with the privilege of chuſing their own patrons; and as this choice was the higheſt mark of confidence and reſpect which theſe helpleſs peaſants could poſſibly pay to their ſuperiors, the nobles became proud of it, and gloried in ſuch honorable opportunities of exerciſing the amiable virtues of friendſhip and benevolence. They valued them-

[15] Cicero, though never much diſtinguiſhed in the profeſſion of arms, bears a very warm teſtimony (if it be not mere declamation) to the ſuperiority of the military character above that of all others in the ſtate. For having drawn a lively and humorous contraſt of the merits of Servius Sulpitius, the famous lawyer, with thoſe of Muræna the general, he adds: "Ac nimirum (dicendum enim eſt quod ſentio) rei militaris virtus præſtat cæteris omnibus, Hæc nomen populo Romano, hæc huic urbi æternam gloriam peperit; hæc orbem terrarum parere huic imperio coëgit. Omnes urbanæ res, omnia hæc noſtra præclara ſtudia, et hæc forenſis laus et induſtria, latent in tutela ac præſidio bellicæ virtutis." Pro Mur. 9. &c.

[16] Dion. Hal. 2. 8. and 9. Grav. O. J. 1. 1.

ſelves,

ſelves, therefore, upon the numerous train of their dependents [17]; and made it their peculiar employment to guard them againſt oppreſſion, to aid them with advice in all matters of difficulty, and to aſſiſt them in their private and domeſtic concerns.

In return for this protection, the client was bound to conſider his patron almoſt in the light of a parent [18], was to attend him, and make part of his retinue upon public occaſions; to relieve him, if reduced to poverty; to contribute to his daughters' portion; and to redeem him, or his children, if taken captives. The connexion was of that cloſe and intimate nature, that the patron and client were not allowed to accuſe or bear witneſs againſt each other. So ſacred were theſe laws always held, that notwithſtanding the many ſucceeding revolutions in this tumultuous ſtate, and the innumerable diſſenſions which the avarice and ambition of the great, and the perverſe and ſeditious humor of the populace, created in the heart of it, the ſenſe of honor and fear of infamy were powerful enough to preſerve theſe relations inviolable for more than ſix hundred years.

Beſide theſe private and perſonal connexions between individuals only, as the Roman dominions increaſed, it was common even for whole colonies and cities to put themſelves under the patronage of ſome great and powerful nobleman, whom they were at liberty to chuſe for themſelves; and the ſenate paid ſuch a profound reſpect to this relation, that, in caſes of diſpute, they would frequently refer theſe cities to the judgment of their patrons alone [19].

[17] Horace, who is a very faithful recorder of the manners of his own times, when he means to magnify the importance of a great man, ſays of him,

Illi turba clientium
Sit major. Od. 3. 1. 13.

And again, as another characteriſtic of his grandeur,

Romæ dulce diu fuit et ſolenne, reclusâ
Mane domo vigilare, clienti promere jura.
Epiſt. 2. 1. 103.

[18] Ἕτερος δὲ τις δυνατὸς ἀπὸ τῶν πολλῶν ἀνήρ, πατρῶνας ὀνομάζων, ὑπὲρ οὗ προστατας, ἐκεῖνος δὲ κλιεντας· ἅμα δὲ πρὸς ἀλλήλους θαυμαστὴν εὔνοιαν αὐτοῖς καὶ μεγάλων δικαίων ὑπαρχόντων ἐπιποιησάμενοι μὴ ἐξεῖναι τι τῶν νομῶν καὶ προσταῖς δικάζομενοις, συμβουλὴς τε παῖδων καὶ κηδεμονας.

[19] Dion. Hal. 2. 110.

To

BOOK I.

Senators.

To aſſiſt and relieve him in the execution of his office (which ſerved at the ſame time as a check upon the regal power), Romulus proceeded next to the eſtabliſhment of a general national council. To this end, he ſingled out one of the moſt able and worthy patricians, whom he deſigned for the preſident of this new-projected body, and likewiſe to be a ſort of viceroy, or prime miniſter, to ſupply his place when engaged with the army. He then directed each tribe to chuſe three, and each "curia" three more, all out of the patrician order, and ſuch as, in their own judgments, they ſhould think the beſt qualified, by their years and abilities. At the head of theſe he placed him whom he had before choſen, as above mentioned; and thus made up the complete number of a hundred [20]; which were afterwards increaſed to two hundred, upon the incorporation of the Sabines [21]. This venerable council, thus conſtituted, he named the Senate, from the age and ſuperior qualifications of the members of whom it was compoſed [22].

It is no uncommon error, among the leſs accurate writers upon the ſubject of Roman hiſtory, to confound the ſenators and patricians together, as always implying the ſame perſons. Plutarch [23] himſelf, indeed, does not mark out the difference between the two characters with that preciſion which might be expected from ſo able a writer. Diſtinct however they really were, both in their origin and office. The ſenator was a patrician, and ſomething more: to his hereditary dignity he added an elective one; an honor, therefore, that did not belong to every individual of the patrician order, as of right, but to ſuch only as were thought moſt deſerving of the public confidence.

The mode of election, as inſtituted by Romulus, has been already deſcribed; and there is no reaſon to think it was ever altered, or

[20] Dion. Hal. 2. 12. Grav. O. J. 1. 1. & 3, & 14—25.

[21] Dion. Hal. 2. 47.

[22] "Quæ niſi eſſent in ſenibus," ſays Cicero of them (i. e. "conſilium, ratio, ſententia), non ſummum conſilium majores "noſtri appellaſſent ſenatum." De Senect. 6.

[23] In Rom. vol. 1. p. 51. edit. Lond. 1729.

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taken out of the hands of the people, during the continuance of the regal government. Neither does it appear that the kings, whatever might have been their influence, had any right to interfere in the choice, except only to nominate the preſident. Under the republic, this general freedom of election, heretofore veſted in the people, ſeems to have undergone a conſiderable alteration, and to have been laid open to the annual magiſtrates, from the quæſtor [24], upwards; who, immediately, upon being inveſted with their reſpective offices, took their places in the ſenate, as a matter of courſe; and continued in them during the year of their magiſtracy.

Upon the expiration of that period, they, who were not before in the cenſor's liſt, ceaſed to be complete ſenators till the next call. This call, however, did not depend entirely upon the arbitrary will of the cenſors; for ſome preſumptive claim certainly remained ever after in thoſe who had once borne theſe high offices [25]; with this material diſtinction, that ſuch as had been *curule* magiſtrates had a right to a ſeat in the houſe, during the whole interval, and of delivering their opinion in it, though not of voting; but under that

[24] Quæſtura, primus gradus honoris." Cic. in Ver. 1. 4.

[25] This appears ſufficiently clear, from what the Roman hiſtorian ſays of thoſe who fell in the field of Cannæ, among whom he enumerates "octoginta præterea aut ſenatores, "aut *qui eos magiſtratus geſſiſſent, unde in* "*ſenatum legi deberent.*" Liv. 22. 49.

Aulus Gellius has maintained the ſame notion, though he has groſsly miſtaken in the application of it to the perſons whom he there means to deſcribe. But, as the following paſſage evidently points out the actual exiſtence of this diſtinction, it will be found extremely worthy of our preſent attention. The author, ſpeaking of thoſe members of the ſenate, who occaſionally gave their votes by paſſing over to a particular ſide of the houſe, called therefore "Senatores Pedarii," adds, "Videturque eos ſignificare, *qui nondum a cenſoribus in ſenatum lecti, ſenatores quidem non erant; ſed quia honoribus populi uſi quidem erant, in ſenatum veniebant et ſententiæ jus habebant. Nam et curulibus magiſtratibus functi, qui nondum a cenſoribus in ſenatum lecti erant, ſenatores non erant:* et, quia in poſtremis ſcripti erant, non rogabantur ſententiæ, ſed, quas principes dixerant, in eas diſcedebant. Hoc ſignificabat edictum, quo nunc quoque conſules cum ſenatores in curiam vocant, ſervandæ conſuetudinis cauſa tralaticio utuntur. Verba edicti hæc ſunt: *ſenatores, quibuſque in ſenatu ſententiam dicere licet.*" Aul. Gel. 3. 18.

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degree, none had any buſineſs there at all, unleſs re-admitted by the cenſors, who were the only officers appointed by the conſtitution to execute that important truſt [26], in the ordinary courſe; as being the general ſuperintendants of the manners of the people, and, conſequently, ſuppoſed to be the beſt judges both of the moral and political merits of thoſe who were candidates for that honor.

Upon any extraordinary diminution, by war or other public calamity, a dictator was likewiſe ſometimes created, for the ſole purpoſe of ſupplying the vacancies. Thus, after the fatal cataſtrophe of Cannæ, M. Fabius Buteo was nominated for that melancholy occaſion; who, in conformity to the conſtitutional practice, firſt choſe ſuch as had been *curule* magiſtrates, next thoſe of an inferior degree, and laſtly, thoſe who had diſtinguiſhed themſelves by any meritorious ſervices to their country in war; and having added an hundred and ſeventy-ſeven new members to the ſenatorial body, he immediately diveſted himſelf of his office, diſmiſſed his lictors, and mixed himſelf among his fellow-citizens, with the univerſal approbation of the whole multitude [27]. In all theſe caſes, however, the antient right of the people was ſo far preſerved, that this appointment required the confirmation of the centuries, and enrolment by the cenſors at the "luſtrum" next enſuing.

The ſenatorial office, therefore, being ſtrictly elective, when any ſenator was degraded or expelled the houſe, as ſometimes happened, he only loſt his accidental, not his hereditary, rank: and as all patri-

[26] "Quo uno modo," ſays Val. Maximus of the cenſorial office, "etiam his, qui "jam honores geſſerant, aditus in curiam da-"batur." Val. Max. 2. 2. 1.

[27] "Recitato vetere ſenatu, inde primum "in demortuorum locum legit, qui poſt "L. Æmilium et C. Flaminium cenſores, "*curulem magiſtratum cepiſſent, nec dum "in ſenatum lecti eſſent*; ut quiſque eorum "primus creatus erat. Tum legit, qui "ædiles, tribuni plebei quæſtoreſve fuerant: "tum ex iis, qui magiſtratus non cepiſſent, "qui ſpolia ex hoſte fixa domi haberent, "aut civicam coronam accepiſſent. Ita "centum ſeptuaginta ſeptem cum ingenti "approbatione omnium in ſenatum lectis, "extemplo ſe magiſtratu abdicavit, priva-"tuſque de roſtris deſcendit, lictoribus abire "juſſis." Liv. 23. 23. This paſſage is not only curious for the ſake of the fact which it relates, but more particularly, as it confirms the truth of the diſtinction between the aforementioned rights, belonging to the two different orders of magiſtrates.

cians

cians were not ſenators, ſo likewiſe all ſenators were not patricians[28]. As the democracy gained ground, the doors of the ſenate were opened to virtue and merit, wherever they were to be found[29]; ſo that worthy plebeians were often admitted, when unworthy nobles were excluded. Beſide the concurrent accounts of the beſt antient writers, there is ſtill extant a law[30] (that will be explained more at large hereafter), wherein the patricians and ſenators are twice mentioned, as quite different characters; which puts an end to all further doubt concerning the reality of the diſtinction.

The power of the ſenate was very great at all times[31]; though it received a vaſt variety both of extenſions and limitations, according to the ſeveral ſpecies of government reſpectively prevailing at the different æras of the commonwealth; and the predominancy of one order over the other. In the earlier times, of which we are now treating, the ſenators were the ſtanding counſellors of the nation[32]; conſequently no law could paſs, nor any public act of the ſtate be laid before the people for confirmation, even by the king himſelf, till it had been previouſly conſidered and approved by the ſenate[33]. In

[28] Roſini Ant. Rom. 1. 17.

[29] Thus ſays the great orator, "Hæc eſt "una via, mihi credite, et laudis, et dignitatis, et honoris: a bonis viris, ſapientibus et bene natura conſtitutis, laudari et "diligi: noſſe deſcriptionem civitatis, a "majoribus noſtris ſapientiſſime conſtitutam: "qui, cum regum poteſtatem non tuliſſent, "ita magiſtratus annuos creaverunt, ut conſilium ſenatûs reipublicæ proponerent ſempiternum: deligerentur autem in id conſilium ab univerſo populo, adituſque in "illum ſummum ordinem omnium civium "induſtriæ ac virtuti pateret." Cic. pro Sext. 65.

[30] I. 1. 2. 4.

[31] Dion. Hal. 2. 14.

[32] Τῳ δὲ συνεδρίῳ τῆς βουλῆς τιμὴν καὶ δυναστείαν ἀπονέμειν τοιάνδε, ὑφ' ἑαυτὸς ὄντα ἂν τὸν τυραννοῦντα βασιλέα, διαγινώσκειν τε καὶ ψῆφον ἐπιφέρειν· καὶ ὅ, τι ἂν δόξῃ τοῖς πλείοσι, τοῦτο κύριον. Dion. Hal. 2. 14.

"Senatus reipublicæ cuſtos, præſes, propugnator." Cic. pro Sext. 65.

[33] Thus the ſenator, Minucius, in his addreſs to the Tribunes, vindicates this antient prerogative of his order: Τῶν βουλῶν εἰσομένων πρώτων ἀρχὰς προβουλεύματα ποιησαμένων, οὕτως ἦν ὑμῖν νόμιμον, δυνατὸν δὲ ἂν καὶ αὐτοῖς τοῦτο μαρτύρασθαι, ὅτι ἐξ ἂν τινὸς τῶν πολὺν ἐπῄνεσαν ὑμῶν ὁ πρόγονος, τοῦτο τὸ γένος ἔχουσα ἡ βουλὴ διατετέλεκεν, καὶ νῦν πανοῦλ ὁ δῆμος, ὅ, τι μὴ προβουλεύσειεν ἡ βουλὴ, οὔτε ἐκύρωσεν, ὅτι ἐπεψήφισεν, οὐχ ὅτι τυν, ἀλλ' οὐδ' ἐπὶ τῶν βασιλέων· τὰ δὲ ἄλλα ἴσα τῷ συνεδρίῳ δόξειε, ταῦτα ὁ βασιλεὺς εἰς τὸν δῆμον εἰσφέρειν, ἐκύρου. Dion. Hal. 7. 38.

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like manner the elections of the kings, and other chief magiſtrates, were to originate in the ſame body, before they could be ratified by the "comitia [34]." In ſucceeding ages, indeed, tribunitian inſolence would ſometimes embarraſs theſe deliberations; but *ſuch* were the conſtitutional privileges of the ſenate, which it both enjoyed and exerciſed in more regular and peaceable times, from its firſt inſtitution, ſo long as any veſtiges remained of the antient free government.

What has been here ſaid of the ſenate is chiefly founded upon the authority of Dionyſius; though, it muſt be confeſſed, that he differs in ſeveral particulars from the Roman writers, and, among the reſt, from Livy himſelf, the moſt celebrated of them all. To ſpeak fairly, the preſent ſubject has been an inexhauſtible ſource of controverſy among the learned; and yet, after all, every attempt to explain, hath oftener ſerved to render it more obſcure. Strange it muſt certainly appear, that the hiſtory of a body ſo univerſally celebrated throughout the world, and which, for ſome centuries, conſtituted the ſupreme viſible power of the moſt potent empire that ever gave laws to mankind, ſhould ſtill remain involved in ſuch inextricable perplexities; did we not ſee many ſimilar difficulties concerning the antiquity and foundations of another aſſembly, no leſs venerable than the Roman, many ages more modern, and the due knowledge of which is of infinitely more ſerious conſequence to ourſelves.

But the true reaſon why all over-curious inquirers meet with ſo little ſatisfaction in their reſearches, is, that they look for a great deal more than was ever poſſible to be found. A very moderate acquaintance with the hiſtory of the world will ſhew, that the pro-

[34] "Decreverunt (ſc. patres) ut cum populus regem juſſiſſet, id ſic ratum eſſet, ſi patres auctores fierent: hodieque in legibus magiſtratibuſque rogandis uſurpatur idem jus, vi ademta. Priuſquam populus ſuffragium ineat, in incertum comitiorum eventum patres auctores fiunt." Liv. 1. 17. Dion. Hal. 2. 57.

Thus again, "Tullum hoſtilium—regem populus juſſit. Patres auctores facti." Liv. 1. 22.

greſs

greſs of civil government was always ſo very gradual and imperceptible; and the improvements made in it were ſo much the effects of mere accident, or occaſional emergence; that it is generally beyond the ken of the moſt acute and diſcerning eye to penetrate into the darkneſs, in which the cauſes and beginnings of it, are almoſt always enveloped. The founders and lawgivers themſelves, being, too often, men of narrow and unenlightened underſtandings, ſeldom looked farther than the preſent temporary occaſion that immediately called for the inſtitution. Much leſs, therefore, could they foreſee the many extenſive and important conſequences of it, which the courſe of time, and the various combinations of human events, would hereafter produce.

It ſhould likewiſe be conſidered, that the ordinary tranſactions of civil government do not always make that impreſſion they ought, upon the careleſs minds of thoſe who are eye-witneſſes of them. They paſs over, like the other tranſitory occurrences of the day, as too inſignificant to be the objects of hiſtoric notice, or as too numerous and complicated to be remembered diſtinctly; or ſhould ſome perſons of more curioſity and diſcernment take the pains to collect them for their own uſe and entertainment, they are apt to be either too proud of the poſſeſſion of ſuch occult knowledge, to be deſirous of making others as wiſe as themſelves; or too negligent in tranſmitting theſe valuable treaſures to poſterity. Sometimes even the very notoriety of facts which all mankind are equally concerned to know, ſuppoſes them to be too univerſally underſtood, to require any artificial aſſiſtance to imprint them upon the mind; till, by the gradual ſucceſſion of time, and the inſenſible changes of human affairs, they become obſolete and antiquated, and are conſigned, unnoticed, to irretrievable oblivion[35]. Add to theſe obvious cauſes,

[35] The obſcurities in the primitive conſtitution of Rome were but too viſible, even in the moſt flouriſhing æra of the republic; and are accounted for upon ſimilar grounds, by

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cauſes, the ignorance of letters; the loſs of antient records; the deceitfulneſs of oral tradition[36]; the defect of authentic materials among the modern hiſtorians, or of judgment and preciſion to make a proper uſe of ſuch as they have collected; and we ſhall then give ourſelves little concern about thoſe difficulties, which are now ſo far removed beyond the reach of all poſſible elucidation. It is ſufficient for our preſent purpoſe, to have taken this general view of the ſenate of Rome, as one of the principal *ſtates* of the nation, and one grand ſource of thoſe laws by which the commonwealth was afterwards governed; referring all further inquiries to the more learned diſſertations of hiſtorians and antiquaries[37].

"Celeres."

Having made theſe wiſe and judicious regulations for the better eſtabliſhment of public order, Romulus laſtly turned his thoughts to the majeſty of his own office, and the ſecurity of his perſon. To this end he ſelected a band of youth, the moſt remarkable for their ſtrength and activity, whom he therefore called "Celeres[38]," and conferred upon them the honor of being his body-guards. Theſe are ſuppoſed, by ſome writers, to have been the original knights, or

by one of the moſt faithful of the antient hiſtorians, who had every opportunity of information, which the remote age wherein he wrote could afford him. Περὶ δὲ τῆς Ρωμαίων οὐδ' ὅλως ευχερες, ουτε περὶ των παροντων εξηγησασθαι, δια την ποικιλιαν της πολιτειας· ουτε περὶ τῦ μελλοντος προειπειν, δια την αγνοιαν των προγεγονοτων περὶ αυτὺς ἰδιωματων και κοινῃ και καθ' ἰδιαν. Polyb. lib. 6. § 6. editi Erneſti, Lipſ. 1764, &c. 8vo.

The celebrated treatiſe upon the various forms of government, and of the Roman in particular, from whence this paſſage is ſelected, is prefixed to the ſixth book of this author's hiſtory; and has been publiſhed ſeparately, by an anonymous editor, at London, 1747; with a very accurate tranſlation, illuſtrated with ſeveral learned notes, and an additional diſſertation upon the conſtitution of the ſenate,

[36] "Res vetuſtate nimia obſcuræ, velutique magno ex intervallo loci vix cernuntur; tum quod et raræ per eadem tempora literæ fuere, una cuſtodia fidelis memoriæ rerum geſtarum; et quod etiamſi quæ in commentariis pontificum, aliiſque publicis privatiſque erant monumentis, incenſa urbe pleraque interiere. Liv. 6. 1.

[37] Among theſe ought always to be mentioned, with great reſpect, an ingenious treatiſe upon the Roman ſenate, by the late Dr. Conyers Middleton; to which, together with the other mentioned in the preceeding note, the Author acknowledges his obligations for ſeveral very uſeful hints, relative to this part of his work.

[38] Grav. O. J. 1. 2.

Ησαν δὲ περὶ αυτον αει των νεων οἱ καλουμενοι κελεριες, απο της περὶ τας ὑπηρεσιας οξυτητος. Plut. in Rom. p. 71.

"equites;"

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"equites;" though others poſtpone the creation of *them* to the time of the union of the Romans and Sabines[39]. But whatever was their beginning, the equeſtrian order grew, in proceſs of time, extremely powerful. They acquired ſeveral privileges and immunities peculiar to themſelves; they had a right of wearing a ring of gold, and other enſigns of dignity; their numbers increaſed till they became indeterminate, and they were allowed to tranſmit their honors to their poſterity. Their military inſtitution was preſerved, long after the cauſe of their firſt eſtabliſhment had ceaſed; for they were laid aſide, as guards, immediately upon the acceſſion of Numa (as will be ſeen preſently), and do not appear to have been ever employed by any future kings to their original purpoſe. They became afterwards a kind of intermediate body between the patricians and plebeians; were a nurſery, among ſeveral others, both for the ſenate and the bench of juſtice; and were relied upon as one great ſupport and bulwark of the ſtate in matters of arms. So much confidence was placed in their valour, that, in the times of the republic, each knight was ſupplied with a horſe by the appointment of the cenſors, at the public expence: and ſo numerous were they grown by the breaking out of the Punic wars, that, if any credit be due to the Roman hiſtorians, the very rings of thoſe that were ſlain at the battle of "Cannæ," were enough to fill two of their meaſures[40], equivalent altogether, as ſome imagine, to three Engliſh gallons[41].

Such was the ſtate of infant Rome, deſtined hereafter to be the miſtreſs of the univerſe; to govern it not only by her living authority, but to extend the influence of her laws far beyond the limits of her temporal exiſtence.

[39] Hooke's Rom. Hiſt. b. 1. c. 2. § 6. note (a).

[40] "Modii."

[41] Hooke, 4. 21.

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CHAP. II.

Numa——His peaceable Regulations——"Pagi"——"Collegia"——"Feciales"——Religious Inſtitutions.

BOOK I. Numa.

THE jealouſies and ſeditions, which enſued upon the ſudden diſappearance of Romulus, would have been fatal to the being of this riſing commonwealth, had not its better genius directed the eye of the whole people towards Numa. A prince, torn thus reluctantly from the boſom of tranquillity and philoſophy, and who ſubmitted to the crown, rather as a burden which his duty forbad him to decline, than as an honor which his ambition importuned him to accept, could not but entertain very different ideas of the great importance of the kingly office, from thoſe of his reſtleſs and warlike predeceſſor.

The firſt outline of the conſtitution, as drawn by Romulus, though very plain and ſimple, was not leſs ſenſible and liberal, and deſervedly intitled him to the honorable name of Founder. But from one, whoſe reign was a continued ſcene of war and violence, a formal code of laws, for the uſes of private and domeſtic life, was an effort of the underſtanding not then to be expected. His ſubjects, of the ſame military caſt with himſelf, were much more intent upon invading the property of their neighbours, than of quarrelling about their own.

To ſoften the manners of this rude and unpoliſhed ſoldiery; to ſubdue their obſtinate and ferocious paſſion for arms; to perſuade them that the paths of peace and civilization lead to much more certain and ſubſtantial happineſs, than thoſe of victory and falſe glory, was a taſk that might have ſtaggered the reſolution of Hercules.

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cules. But however difficult it was in appearance, Numa had the courage to encounter, and the fortune to accompliſh, it.

He began his reformation by diſmiſſing the "celeres," from the guard of his perſon; aſſigning for a reaſon, "that it would ill be-"come him to reign over a people whom he diſtruſted, and as ill to "diſtruſt a people who compelled him to reign over them [1]." His next great object was, to encourage the population of this young colony, and to prevent its diminution by the ravages of the ſword. But at the ſame time, to make his people hardy and laborious, and to keep them from growing effeminate by too long a ſucceſſion of peace, he diſtributed among them the conquered and vacant lands, dividing them into "Pagi," or villages; and placing over each "Pagi." a ſuperintendant, to prevail with them, by every motive both of reward and puniſhment, to improve the arts of agriculture; and to give new life to their induſtry, he himſelf frequently condeſcended to be their overſeer. In conſequence of this wiſe policy, the functions both of peace and war were uſually diſcharged by the ſame perſon. The huſbandman, the magiſtrate, and the ſoldier, became the mutual ornament of each other's profeſſion; the unpoliſhed ruſtic ſtept at once from the plough to the conſulſhip, or to the head of the army [2]; and having finiſhed the campaign, with equal honor to himſelf and benefit to his country, deſcended, in modeſt dignity, from the ſplendid car of triumph; returning, in all content and humility, to the peaceful cares of a rural and ſequeſtered life [3].

Another regulation, admired by his biographer as one of the "Collegia." wiſeſt ſtrokes of policy of Numa's whole reign, was the ſepara-

[1] Ουτε γαρ απιστειν πιστευουσιν, ουτε βασιλευειν, απιστουντων ἀξιου. Plut. in Numâ, p. 139.

[2] Thus Cicero deſcribes the plain manners of the primitive ages, "Ab aratro "arceſſebantur, qui conſules fierent;" and again, "Apud majores noſtros, ſummi "viri, clariſſimique homines, qui omni "tempore ad gubernacula reipublicæ ſedere "debebant, tamen in agris quoque colendis "aliquantum operæ, temporiſque conſump-"ſerint." Pro Roſc. Amer. 18.

[3] "Expeditione finita, rediit ad boves "rurſus triumphalis agricola." Luc. Flor. I. II.

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tion of all the artizans and tradeſmen of Rome into particular companies, according to their reſpective employments. For as the people adhered too much to their antient diſtinctions of Romans and Sabines, which was the ſource of infinite diſcords, his knowledge of human nature ſuggeſted to him, that by mixing them all together, by the tie of their own private and particular intereſts, he ſhould ſoon efface the memory of their different origins; in which his judgment was not deceived. Theſe companies were called by the Romans, "Collegia [4];" they ſubſiſted ever after upon their original foundations; and were, moſt probably, the archetypes of thoſe ſimilar communities, now ſo numerous in this, and other modern trading nations.

"Feciales."

The "Feciales," likewiſe, an inſtitution of great conſequence in the law of nations at large, have the honor of claiming Numa for their founder. Theſe were a college of military prieſts, whoſe office it was to adjuſt the differences between their own and foreign ſtates, and not to permit the Romans to declare war, till all hopes of accommodation were at an end [5].

Religious inſtitutions.

But this pious and excellent prince was, above all things, attentive to the regulation of religious rites and ceremonies; for he well knew that nothing could ſo effectually overcome the fierceneſs of uncultivated nature, as the dread of a ſupreme almighty Being [6]. He is ſuppoſed likewiſe to have had ſome knowledge of the Jewiſh religion and conſtitution, from a ſimilitude of his laws to ſome very peculiar ones of that ſelect people [7]. Such as thoſe which enjoin a

[4] By the Greeks Κοινωνιαι. Plut. ibid. p. 155.

[5] For which reaſon they are called by Plutarch Ειρηνοφυλακες. In Numa, p. 147. By Dionyſius, Ειρηνοδικαι. 2. 72.

[6] "Numa religionibus et divino jure "populum devinxit." Tac. Ann. 3. 26.

Ουτω μετεωρον και τετραχυμενον δημον ου μικρας ουδε φαυλης ουσης ειναι πραγματειας μεταχειρισασθαι και μετακοσμησαι προς ειρηνην, ηγαγετο την απο των θειων βοηθειαν. Plut. in Num. 140.

[7] Selden de J. N. & G. 1. 2.

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kind of ſabbatical ceſſation from labor on holidays[8]; and others, more particularly, that forbid the worſhip of images. And theſe latter eſpecially were ſo ſtrictly obſerved, that Plutarch and other credible hiſtorians have remarked, that, for the ſpace of an hundred and ſeventy years after theſe laws were enacted, idolatry was unknown in Rome. An attempt to expreſs the auguſt ideas of an inviſible and ſpiritual Being by ſuch groſs and vulgar repreſentations, was then eſteemed a moſt heinous act of impiety; for, according to the opinion he then held, "it was impoſſible to form any "conception of the Deity, but in the underſtanding[9]. Notions of great purity and refinement for ſuch unenlightened times! It is likewiſe worth remarking, that, even after the revival and increaſe of idolatry, the profound veneration paid to their gods, though ſuperſtition at beſt, contributed, more than any other cauſe, to keep alive that high ſenſe of honor and juſtice, for which the Romans were ſo deſervedly famous for many centuries, till the latter days of politeneſs, luxury, and corruption; when religion, and, of courſe, moral virtue, were ſwallowed up in Stoical fataliſm, and Epicurean inſenſibility.

A ſyſtem of policy founded upon principles ſo wiſe and benevolent, not only inſured happineſs and tranquillity to the Roman people at home, but imparted a conſiderable ſhare of the ſame bleſſings to all the neighbouring ſtates. So powerful were its effects,

[8] The words of Plutarch are very remarkable, φετο ὁ Νυμας χρηναι τους πολιτας μητε ακουειν τι των θειων μητε ὁραν ἐν παρεργῳ και αμιλως, αλλα σχολην αγοντας απο των αλλων, και προσεχοντας την διανοιαν ὡς πραξει μεγιστῃ τῃ περι την ευσεβειαν, ψοφων τε και παταγων και γινγμων, και ὁσα τοιαυτα τοις αναγκαιοις και βαναυσοις πονοις ἐπεται, καθαρας τας ὁδους ταις ἱερεργιαις παρεχοντας. Ib. p. 150.

[9] Ἐτι δε και τα περι των αφιδρυμαλων νομοθετηματα παλαπασιν ἀδελφα των Πυθαγορου δογμαλων ὑτι γαρ ἐκεινος αισθητον η παθητον, ὁρατον δε και ακηραλον και νοητον ὑπελαμβανεν ειναι το πρωτον. ὑτος δε διεκωλυσεν ανθρωποειδη και ζωομορφον εικονα Θεου Ρωμαιους νομιζειν. ὑδ' ην παρ' αυτοις ὑτε γραπτον, ὑτε πλαστον ειδος Θεου προτερον, αλλ' ἐκατον ἑβδομηκοντα τοις προτοις ἐτεσι ναους μεν οικοδομημενοι διετελων· και καλιαδας ἱερας ἱστανες, αγαλμα δε θεου εμμορφον πεποιημενοι διετελων· ὡς ὑτε ὁσιον αφομοιουν τα βελτιονα τοις χειροσιν, ὑτε ἐφικτον Θεου δυναμιν αλλως η νοησει. Ib. p. 141.

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that, during the whole reign of Numa, "there was neither war, in-
"surrection, nor any attempt either againſt his perſon or govern-
"ment. His ſubjects, grown prudent by their prince's example,
"required neither force nor threats to incline them to their duty;
"but led a quiet and irreproachable life, in concord, juſtice, and
"temperance; the moſt deſirable criſis at which human beings can
"ever hope to arrive. That man, therefore," continues the biogra-
pher, "is the moſt deſerving of a throne, who has the art of inſpir-
"ing his ſubjects with ſuch virtuous inclinations, and of conducting
"them to ſo perfect a ſtate of political happineſs [10]."

CHAP. III.

Succeſſors of Numa to Servius Tullius—Alterations made by Servius—Increaſe of the Tribes—Claſſes—Centuries—"Comitia"—"Cen-"ſus"—*Tyranny and Expulſion of Tarquin.*

Succeſſors of Numa, to

FROM the time of Numa, few changes were made in the laws and civil conſtitution of Rome, till the reign of Servius Tullius. His three immediate predeceſſors, either from inclination or neceſſity, were embroiled in perpetual conteſts with their hoſtile neighbours; and therefore, however well diſpoſed, had no leiſure to think of improving the legal ſyſtem, or of correcting any of its original defects. The only alterations worthy of notice were, that Tullius Hoſtilius [1],

[10] Ουτε πολεμος, ουτε νεωτερισμος περι πολιτειαν ἱστορηται, Νεμα βασιλευοντος. ὑ μην ὑδε επ' αυτον εκεινον εχθρα τις, η φθονος, η δι' ερωτα βασιλειας επιβυλη και συγασις ανδρων.—ταχα γαρ ουδε αναγκης τινος δει προς τυς πολλυς, ουδε απειλης· αυτοι δε την αρετην εν ευδηλῳ παραδειγματι και λαμπρῳ τῳ βιῳ τυ αρχοντος ὁρωντες, ἑκυσιως σωφρονυσι, και συσχηματιζονται προς τον εν φιλια και ὁμονοια τῃ προς αυτυς, μετα δικαιοσυνης και μετριοτητος, αμυμονα και μακαριον βιον, εν ᾧ το καλλιστον ἁπασης βουλειας τελος εστι· και βασιλικωτατος ἁπαντων ὁ τυτον τον βιον και ταυτην την διαθεσιν τοις ὑπηκοοις ενεργασασθαι δυναμενος. Plut. in Numa, p. 159.

[1] "Reperta quædam a Tullo et Anco," ſays Tacitus (Ann. 3. 26.); but whatever they were, no traces are now to be diſcovered of them. Thus ſays Tullus to the Albans, Το μεν αλλο πληθος ὑμων μετα των παρ' ἡμιν δημοτικων συντελειν εις φυλας και φρατρας καταμεριθεν, βυλης δε μετεχειν και αρχας λαμβανειν τυσδε τους οικυς, Ιυλιυς, Σερυιλιυς, Γεγανιυς, Μετιλιυς, Κορατιυς, Κοιντιλιυς, Κλοιλιυς. Dion. Hal. 3. 29.

on

on the conqueſt of Alba, incorporated a few of the Alban families into the ſenate, not indeed to increaſe the number, but only to ſupply the vacancies[2]; and that Tarquinius Priſcus, to conciliate the favor of the people, added an hundred more, out of the plebeian families, ſo as to make the whole number three hundred[3].

Servius Tullius.

The acceſſion of Servius ſowed the ſeeds of that democratical ſpirit, which, in time, animated the whole body of this mighty people; and, according to the different purpoſes to which it was afterwards applied, became the cauſe, either of the glory and proſperity, or of the diſgrace and ruin, of the republic. He is charged with having totally altered the fundamental principles of the conſtitution, by accepting the crown from the commons alone, whoſe power had heretofore extended no further, than to the ratification of the choice which had been previouſly made by the ſenate[4].

To expreſs his apprehenſion of the great danger of intruſting the adminiſtration of the ſovereign power to the precarious will of a ſingle perſon, he enacted laws which were to be equally binding upon the king, as upon the ſubject[5]; and he even went ſo far, as to meditate the reſignation of his crown, and the introduction of a popular government[6]. Theſe checks upon ariſtocratical licence ſo exaſperated

[2] Dion. Hal. 3. 29.

[3] Ευθυς αμα τω παραλαβειν την αρχην, τον δημοτικον οχλον οικειον ἑαυτω ποιησαι προθυμηθεις, ὡσπερ οἱ πρωτερον βασιλεις ἐποιουν, δια τοιαυτης ευεργεσιας ὑπαγαγεσθαι. ἐπιλεξας ανδρας ἑκατον ἐκ παντων των δημοτικων, οἱς αρετην τινα πολεμικην ἡ πολιτικην, φρονησιν ἀπασης εμαρτυρουν, πατρικιους ἐποιησε, και, κατεταξεν εις τον των βουλευτων αριθμον. και τοτε πρωτον ἐγενοντο Ρωμαιοις τριακοσιοι βουλευται, τους ολους διακοσιοι. Dion. Hal. 3. 67.

[4] Τουτον τον ανδρα λεγουσι Ρωμαιοι πρωτον τα παλαια ἐθη και νομιμα κινησαι, την αρχην λαβοντα ου παρα της βουλης και του δημου, καθαπερ οἱ προ αυτου παντες, αλλα παρα μονου του δημου, δικασμοις και δωροδοκιαις, και αλλαις πολλαις κολακειαις ἐκθεραπευσαντα τους απορους· και ἐχει τ' αληθες ὑτως. Dion. Hal. 4. 40.

[5] "Præcipuus Servius Tullius ſanctor "legum fuit, queis etiam reges obtempe- "raverint." Tac. Ann. 3. 26.

[6] "Idipſum tam mite ac tam moderatum "imperium, tamen quià unius eſſet, depo- "nere eum in animo habuiſſe, quidam auc- "tores ſunt, ni ſcelus inteſtinum liberandæ "patriæ conſilia agitanti interveniſſet." Liv. 1. 48. Dion. Hal. 4. 8, 9, 10. 12.

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the patricians, that they are ſaid to have joined in the conſpiracy with Tarquin, to dethrone and murder him [7].

But whatever truth may have been in theſe ſuggeſtions, his general conduct certainly reflected the brighteſt luſtre upon his royal ſtation. Though by birth a ſlave, he poſſeſſed all the united accompliſhments both of Romulus and Numa; by his valour he became the terror of his enemies, and by his wiſdom and moderation, the darling of his ſubjects. The firſt objects of his attention were the poor and oppreſſed. He reſtrained the power of uſurers over the perſons of their inſolvent debtors, thinking it ſufficient to give the creditors a ſecurity upon the goods alone. He proportioned the public taxes and contributions to the different ranks and fortunes of the people; and having deprived all ſuch as had obtained poſſeſſion of the conquered lands by any acts of injuſtice, he diſtributed them among the deſtitute; it being his opinion, that generous ſentiments could never dwell with thoſe, who were in want of the daily means of ſubſiſtence. But, above all, he was particularly ſollicitous that juſtice ſhould be impartially adminiſtered, and the bleſſings of a free conſtitution be equally ſecured to every individual of the community [8].

Increaſe of the Tribes.

The people being, by this time, conſiderably increaſed, Servius found it neceſſary to enlarge the bounds of the city, by taking in two more hills, and to add one more tribe to thoſe already inſtituted by Romulus [9]. That the inhabitants likewiſe of the country round Rome might partake of the ſame advantages with their fellow-ſubjects, he diſtributed them into tribes, upon a ſimilar plan with thoſe within the walls. Critics and antiquaries are much divided about the preciſe number thus eſtabliſhed [10], but that is a queſtion of no conſequence at preſent. It is ſufficient only to obſerve, that, by various augmentations, they roſe to thirty-five, which they never afterwards exceeded; and that, from their reſpective ſituations, they were diſtinguiſhed by the

[7] Και επι ταυτη μαλιστα λεγεται τη αιτια των πατρικιων αυτω τινας συνεπιβουλευσαι. Dion. Hal. 4. 40.

[8] Dion. Hal. 4. 11.

[9] Ib. 4. 15.

[10] Hooke, 1 7. 3. note (b).

titles

titles of "Urbanæ" and "Ruſticæ." Each had its peculiar name, taken either from the place of its ſettlement, or from ſome great family, which had been originally the head of it.

The number of "curiæ" was not augmented together with the tribes; ſo that they always continued in the ſame ſtate as when firſt inſtituted by Romulus; were confined to their primitive ſituation in the old city; and in a few ages loſt all their conſequence. They were convened only out of ceremony, and in compliment to their antiquity, to add greater ſolemnity to ſome particular acts of the other "comitia," chiefly in matters of religion[11]; and even then the individual members did not aſſemble in a body, but were repreſented only by thirty lictors[12]. The "comitia tributa" were, originally and properly, the aſſembly of the commons alone. In them were made the elections of ſeveral magiſtrates of the inferior ſort, and ſuch laws as concerned their own particular order, well known by the name of "Plebiſcita[13]."

Claſſes.

But the moſt material alteration introduced by this politic monarch, was the new diviſion of the people into Claſſes and Centuries[14]. Every citizen was hitherto ſubject to a kind of capitation tax, which was levied equally upon the poor and the rich; they were all obliged likewiſe, without diſtinction, to ſerve in the field at their own expence. To relieve them from ſo heavy a burden, Servius directed the heads of every family, under the ſevereſt penalties, to deliver in upon oath an exact account of their whole effects and fortune. Having thus obtained a particular information of the circumſtances of all his ſubjects, he ſeparated them into ſix claſſes, in proportion to the value of their reſpective eſtates, and taxed them all according to their ſeveral abilities.

[11] "Curiata tantum auſpiciorum cauſâ "remanſerunt." Cic. pro Leg. Agr. 2. 11.

[12] Grav. O. J. 1. 10. 28. Cic. pro Leg. Agr. 2. 12.

[13] Grav. O. J. 1. 28.

[14] Dion. Hal. 4. 16—21.

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Centuries.

By the conſtitution of the "comitia curiata," the vote of every citizen was of equal weight; conſequently the balance of power inclined too much in favor of the poor and ignorant, who were leſs able to underſtand the principles of government, and more expoſed to prejudice and corruption, than the better educated and wealthier nobility. To obviate this inconvenience, Servius ſubdivided the ſix claſſes above mentioned, into an hundred and ninety-three centuries [15]. The firſt claſs comprehended the patricians, knights, and all the richeſt citizens, and contained ninety-eight centuries. The ſecond conſiſted of the tradeſmen and mechanics, and had twenty-two. The third, the ſame number. The fourth, twenty. The fifth, thirty. The ſixth took in all the poorer ſort of every denomination, who conſtituted altogether no more than one century; though, to make them ſome amends for the loſs of their political conſequence, they were indulged with an exemption from military ſervice, except in caſes of tumult and imminent danger; and were reſerved, principally, for the more peaceable employment of increaſing population; from whence they obtained the title of Proletarians [16].

From this period the "comitia centuriata" aſſumed to themſelves the whole majeſty of the Roman people, which before had reſided in the "comitia curiata." They became the ſtates-general of the

[15] Grav. O. J. 1. 11.

[16] "Qui in plebe Romana tenuiſſimi "pauperimique erant, neque amplius quam "mille quingentum æris in cenſum defere-"bant, *Proletarii* appellati ſunt.—Sed quo-"niam res pecuniaque familiaris obſidis "vicem pignoriſque eſſe apud rempublicam "videbatur; amoriſque in patriam fides quæ-"dam in ea firmamentumque erat; neque "proletarii neque capite-cenſi milites, niſi "in tumultu maximo, ſcribebantur; quia "familia pecuniaque his aut tenuis aut "nulla eſſet. Proletariorum tamen ordo ho-"neſtior aliquanto et re et nomine, quam ca-"pite-cenſorum fuit; nam et aſperis rei-"publicæ temporibus, cum juventutis inopiâ "eſſet, in militiam tumultuariam legeban-"tur; armaque iis ſumptu publico præbe-"bantur; et non capite-cenſione, ſed pro-"ſperiore vocabulo a munere officioque prolis "edendæ appellati ſunt. Quod, cum re fa-"miliari parva minus poſſent rempublicam "juvare, ſobolis tamen gignendæ copia ci-"vitatem frequentarent." Aul. Gell. 16. 10.

nation,

CHAP. III.

nation; and no laws ("leges," properly ſo called) could be enacted, unleſs by virtue of their ſupreme authority. But as the antient modes of voting in the "comitia" were ſtill obſerved, the centuries of the rich were ſo very numerous, that if thoſe of the firſt claſs happened to be all of the ſame mind, they were of themſelves a majority of the whole, and decided the queſtion without calling in the reſt [18]. The higher claſſes, however, were, in general, ſo well agreed, that it ſeldom happened that more than the three firſt ever came to vote at all [19]. Thus did the nobility, and the richer part of the citizens, obtain a very ample recompence for the many additional burdens they were now obliged to bear; and the poor were but little affected by the loſs of that power, the uſe of which they did not underſtand; eſpecially as they had exchanged it for the more ſubſtantial comforts of a releaſe from taxes, and other expenſive ſervices. This change, however, beneficial as it really was to the fortunes of the poor, laid the foundation of that ariſtocratical power, which fell ſo heavily upon the commons, during the early ages of the conſular government.

"Cenſus."

To preſerve the ſpirit of this inſtitution, and to prevent the rich and poor from being any more blended together in the ſame claſs, Servius directed, that a new eſtimate of each man's eſtate ſhould be taken every fifth year. This was called a "Cenſus;" and was concluded with a ſolemn luſtration, or expiatory ſacrifice, for the whole people; from which cuſtom, this time of five years was ever after deſcribed by the word "Luſtrum [20]." The ceremony was, at firſt, performed

A. U. C. 311.

The firſt time that the "proletarii" were intruſted with arms, was on the occaſion of the invaſion of Pyrrhus: "Nam "et eo primum tempore, quum tanta undique "belli mole coorta, imperium pluribus exer-"citibus defendi oporteret, proletarii, quibus "antiquitus vacatio militiæ fuerat, facra-"mento rogari cepere. Arma, quæ parare "per inopiam non poterant, publicè data." Liv. 12. 22.

[18] Roſ. Ant. Rom. 6. 14.

[19] For a more particular and ſatisfactory account of theſe matters, I would refer the reader to Hooke's Rom. Hiſt. 1. 7. and note (a).

[20] Thus Horace, having completed his fortieth year, deſires his friend X. Phoceus not to

BOOK I.

performed by the kings, afterwards by the conſuls; but as the latter were generally engaged in wars, and were little at leiſure to attend to the affairs of peace, two other officers were created for this particular purpoſe. The cenſorſhip, though not the higheſt, was eſteemed one of the moſt important offices in the whole ſtate; and was conferred upon ſuch only as were diſtinguiſhed above the reſt by their piety, gravity, and ſeverity of life[21].

The cenſors being inveſted with the power of inquiring minutely into the circumſtances of every individual citizen; if any one were found declined in fortune, if a ſenator, he was degraded into an equeſtrian; if an equeſtrian, into a plebeian; and ſo downward, to the loweſt degree of that order[22]. The rank was forfeited, in like manner, for a ſcandalous courſe of life. The offending plebeian, who had not far to fall, was deprived of the right of ſuffrage, removed from his tribe, and turned over "in Cæritum tabulas[23]." From this mark of infamy he was called "Ærarius," and "Capite-cenſus," as retaining the rank of citizen in nothing elſe than the burden of it, that is, the payment of tribute. As the cenſors had the power of degrading, ſo likewiſe had they that of reſtoring to the loſt ranks, either upon the improvement of the fortune, or the amendment of the manners; a power, when judiciouſly and impartially executed, of great uſe in encouraging both œconomical and moral virtue. But the whole exerciſe of it was liable to the judgment of the people, and controllable by the tribunes[24].

to be jealous of the praiſes he (the poet) had beſtowed upon his miſtreſs, becauſe he was paſt the age of gallantry:

—— fuge ſuſpicari,
Cujus *octavum* trepidavit ætas
Claudere *luſtrum*. Od. 2. 4.

Dion. Hal. 4. 15. Liv. 1. 42, 43, 44. Grav. O. J. 1. 8. D. 1. 2. 2. 17. & Muel. ibid.

[21] Liv. 4. 8.

[22] Grav. O. J. 1. 3. et 8. To this Horace alludes, Ep. 1. 1. 57.

"Si quadringentis ſex ſeptem millia deſunt,
"Plebs eris."

[23] Cære was a municipal town of Italy, which had incurred this puniſhment, for a revolt. A. Gell. 16. 13. Horace, therefore, ſpeaking of certain abandoned people, calls them

"Cærite cerâ
"Digni." Ep. 1. 6. 62.

[24] Liv. 45. 15.

Thus

CHAP. III.

Thus cherished by the paternal care and vigilance of these mild princes, the Roman State daily acquired new vigor and stability; and became an object of respect, as well as of dread, to the whole continent of Italy [25].

Tarquinius Superbus.

But the happy effects of this excellent policy were at last defeated by Tarquin the Second, deservedly stigmatized by the odious surname of the Proud. This execrable parricide, having usurped the throne without the consent either of the senate or people, thought himself at full liberty to set law and humanity at open defiance; to destroy the free spirit of the constitution; and to insult, at pleasure, over the miseries of his afflicted country [26]. But it is an eternal truth, that a tyrant can have no enemy greater than himself [27]. A people nursed in the arms of liberty, who in their king had been always used to revere their parent, could not feel with patience the iron hand of the oppressor. The memorable outrage, therefore, committed by his flagitious son upon the virtuous Lucretia, easily roused the spirit of the whole nation, already inflamed with resentment, and ripe for revolt; and gave birth to a republican government, the most wonderful and illustrious, that ever appeared in the history of the universe [28].

Fortunate, however, as this event really was in itself, considered as a deliverance from one accidental tyrant; yet the anarchy and

[25] "Priores (sc. reges) ita regnarunt, ut "haud immerito omnes deinceps conditores "partium cæptæ urbis, quas novas ipsi sedes "ab se auctæ multitudini addiderunt, numerentur." Liv. 2. 1.

[26] Ουτος υπεριδων μεν το θελημα το δημοτικου, υπεριδων δε των πατρικιων, υφ' ων επι της βασιλειας προηχθη, ωδη τι και νομος και παντα τον επιχωριον κοσμον, ω την πολιν εκοσμησαν οι προ αυτου βασιλεις, συγχυας και διαφθορας, εις ομολογουμενην τυραννιδα, μετεστησε της αρχης. Dion. Hal. 4. 41.

[27] Sallust has made some very fine observations on the miserable state of a tyrannical ruler, very applicable to the present subject. Ad Cæs. de rep. ord. Ep. 2. "Equidem ego "cuncta imperia crudelia magis acerba, "quam diuturna, arbitror, neque quemquam "a multis metuendum esse, quin ad eum ex "multis formido recidat: eam vitam bellum "æternum atque anceps gerere: quoniam "neque adversus, neque ab tergo, aut late-"ribus tutus sis: semper in periculo, aut "metu agites."

[28] Dion. Hal. 4. 64.—ad fin.

BOOK I.

confuſion which immediately enſued, was a very poor exchange for the tranquillity they enjoyed, under their primitive kingly government. In thoſe golden days, when the people were kept in ſubjection by the influence of manners, rather than by the dint of authority; where a happy mediocrity, both of fortune and deſires, prevailed univerſally through all orders and ranks of the ſtate; each enjoyed his lot in content and ſecurity. Wealth, luxury, and ambition, the certain ſources of licentiouſneſs, vice, and diſorder, had not then invaded their innocent manſions. The laws were few, many being unneceſſary; and they were obeyed with cheerfulneſs, becauſe in their obedience the people ſaw their intereſt.

Livy, therefore, juſtly obſerves[29], that, "Had another Bru-
"tus wreſted the ſcepter out of the hands of any of the former
"kings, it muſt have been fatal to the very being of the ſtate.
"For what evils would not have ariſen from a tumultuous rabble
"of ſhepherds and refugees, who had obtained liberty, or rather,
"impunity, under the inviolable ſanctuary of a temple; when un-
"controlled by regal authority; agitated by the ſtorms of tribuni-
"tian fury; and engaged in conteſts with the patricians in a ſtrange
"city; before the pledges of wives and children, and an affection
"for the ſoil itſelf, to which time only could reconcile them, had
"cordially united their minds? Diſcord would have totally diſ-
"ſolved their infant ſtate, which the mild hand of regal govern-

[29] "Neque ambigitur, quin Brutus idem, "qui tantum gloriæ, Superbo exacto rege, "meruit, peſſimo publico id facturus fuerit, "ſi libertatis immaturæ cupidine priorum "regum alicui regnum extorſiſſet. Quid "enim futurum fuit, ſi illa paſtorum conve-"narumque plebs transfuga ex ſuis populis, "ſub tutela inviolati templi, aut libertatem, "aut certe impunitatem adepta, ſoluta re-"gio metu, agitari cæpta eſt tribunitiis pro-"cellis? Et in aliena urbe cum patribus "ſerere certamina, priuſquam pignora con-"jugum ac liberorum, caritaſque ipſius ſoli, "cui longo tempore aſſueſcitur, animos "eorum conſociaſſet? Diſſipatæ res, nondum "adultæ, diſcordia forent: quas fovit tran-"quilla moderatio imperii, eoque nutriendo "perduxit, ut bonam frugem libertatis ma-"turis jam viribus ferre poſſent." Liv. 2. 1.

"ment

" ment carefully cheriſhed, and gradually brought to ſuch a per-
" fection of ſtrength and maturity, that they were well prepared
" to ſupport ſo violent a convulſion; and to enjoy, with eaſe, the full
" harveſt of liberty."

Great revolutions, however fortunate in their conſequences, are oftener the effects of ſome ſudden and violent provocation, than of any cool and premeditated deſign. The authors themſelves cannot foreſee how far they may be tranſported, either by their intereſts or paſſions; or by what haſty ſtrides they may go on, from the puniſhment of a tyrant, to the reformation of a ſtate. They ſeldom think of redreſſing a public evil, till driven to it by ſome perſonal feeling of their own. But the ways of man are in the hands of God. His daily providence directeth the various occurrences in the world to many great, beneficial ends, far beyond the reach of human foreſight; and maketh the ſelfiſh views of a few narrow-minded individuals ſubſervient to the welfare of ſociety at large.—An obſervation that is fully verified, by the intereſting events of the enſuing period.

THE HISTORY OF THE LEGAL POLITY of the ROMAN STATE; AND OF THE RISE, PROGRESS, and EXTENT OF THE ROMAN LAWS.

BOOK II.

The Conſular or Republican Government, to the Time when Julius Cæſar, having paſſed the Rubicon, became ſole Maſter of Rome, and of all Italy.

CHAP. I.

Creation of the Conſuls.—"Jus civile Papyrianum."—*Popular Seditions.*—*Tribunes.*

BRUTUS has been held up to all following ages, as a conſummate model of genuine patriotiſm; yet it was a ſuddden accident only that called forth his virtues into action, and made him the

BOOK II. CHAP. I. Second Period.

BOOK II.

the fortunate inſtrument of his country's deliverance. If we look back upon this inflexible adverſary to the regal office, during the earlier part of his time, and till the preſent critical moment; we ſhall ſee him ſubmitting, in ſilent and ſullen patience, to an uninterrupted courſe of the moſt cruel and mortifying indignities, for the tedious ſpace of twenty-five years; and condeſcending to preſerve a comfortleſs life of humiliation and ignominy, by an affected renunciation of the uſe of his underſtanding. Even at laſt, had not Lucretia been violated, Rome, perhaps, had never been free. But vengeance was now gone forth. Tarquin was deſtined to expiate the crimes of a long reign; and becauſe the tyrant had juſtly drawn upon his own head the whole weight of the national reſentment, the king, as unjuſtly, was for ever to be degraded from the throne To effect theſe fundamental changes in the political ſyſtem, the concurrence of the people was neceſſary,—and *liberty* was the word [1]: yet, among the many new ſchemes of government at firſt propoſed, that only, which favored the intereſt of the ariſtocratical party, met with any cordial encouragement. The democratical form, which ſucceeded in its turn, aroſe from a new ſeries of provocations on the part of the nobles; and from an accidental combination of other unforeſeen events.

It is evident, from the hiſtories of thoſe times [2], that the king had long been an object of envy and jealouſy to the patricians. They were juſtly ſuſpected of the murder of Romulus himſelf; and, after his death, they were very unwilling to proceed to the election of a ſucceſſor, till forced into it by the clamors of the people [3]. Neither

[1] Thus Brutus, in his ſpeech upon the death of Lucretia, gives the following advice: Επιλα των αλλων ικαςος παριων καληγορειτω της τυρανιδος, και τυς πολιας επι την ελευθεριαν παρακαλειτω. ιςαι δι πασι Ρωμαιοις καὶ ευχη, εαν ιδωσιν ημας τυς πατρικιυς αρχοντας της ελευθεριας· πολλα γαρ και δεινα πεπονθασιν υπο τυ Ταρκυνιυ, και μικρας αφορμης δεονται. Dion. Hal. 4. 71.

[2] Dion. Hal. 2. 56—58.

[3] Fremere deinde plebs, multiplicatam ſervitutem, centum pro uno dominos factos; nec ultra niſi regem, et ab ipſis creatum, videbantur paſſuri. Liv. 1. 17.

could

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could they conceal their peeviſh diſcontent, even under the mild reign of the patriotic Servius. Their pride was particularly offended at the privileges which that humane prince granted to the manumitted ſlaves [4], and the ſtrong attachment he always ſhewed to the plebeian intereſt [5]. The depoſition of a Tarquin was certainly a meritorious effort of true heroiſm, and would have been ſtill more honorable to its authors, had the tenor of their future conduct correſponded with their firſt profeſſions. But it ſoon appeared, that they hated monarchy, only becauſe their own ſhoulders were galled with its weight; and that they valued the bleſſing of liberty much more for the ſake of enjoying it themſelves, than of imparting it to others. Though the inferior members of the community had exerted an equal zeal for the ſame glorious cauſe [6], their only rewards were inſult, contempt, and oppreſſion.

In compliment, however, to the eſtabliſhed principles of the antient conſtitution, the "curiæ" were now aſſembled in due form; and the new deliverers had the art, by their animated and pathetic harangues, to work upon the paſſions of the populace to ſo violent a degree, as to render the very name of king, heretofore ſo deſervedly revered, the object of univerſal abhorrence and deteſtation; and to obtain the abolition of it for ever, as a title of magiſtracy. From henceforth, therefore, it was appropriated only to a particular officer, whoſe duty it was to ſuperintend certain religious rites and ceremonies, which were before performed by the king in perſon [7].

[4] Dion. Hal. 4. 22, 23.

[5] Ibid. 4. 40.

[6] Ταρχυνιος—επιθεμενων αυτῳ των πατρικιων, και του δημου συμφρονησαντος, εξεπεσε της δυναστειας. Dion. Hal. 4. 63.

[7] "Quia quædam publica ſacra per ipſos "reges factitata erant, nec ubi regum deſi- "derium eſſet, regem ſacrificulum creant." Liv. 2. 2. Thus Brutus, ινα δε και τὸνομα της βασιλικης εξουσιας πατριον ὑπαρχον ἡμιν, και συν θειοις αισιοις θεων επικυρωσαιμεν παρελθοντος εις την πολιν, αυτης ἑνεκα της ὁσιας φυλαξωσι ἱερον, αποδειξωσθω τις αει βασιλευς, ὁ την τιμην ταυτην ἑξων δια βιου, πασης απολυομενος πολεμικης ασχολιας, τυτο μονον ἑχων ἑργον, ὁσπερ ὁ βασιλευς, των θυσιων, αλλο δε ουδεν. Dion. Hal. 4. 74.

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Conſuls.

To ſupply the place of the depoſed monarch, two other magiſtrates were ſubſtituted, with the leſs invidious name of Conſuls[8]. The power was thus cautiouſly divided between two, that they might be a check upon each other; and the duration of it limited to one year, leſt they ſhould have time to form parties in the ſtate, and perpetuate a new ſyſtem of tyranny in themſelves and ſucceſſors[9].

The ſhort-ſighted commonalty were eaſily captivated with this new and enchanting ſcene of policy, ſo ſpecious, liberal and moderate on its firſt appearance. They fondly imagined, that their antient liberty would ariſe, with renewed vigor, from the aſhes of extinct monarchy. But as their paſſions began to cool, and they had leiſure to reflect upon the conſequences of this momentous revolution, they then found, to their ſore mortification, that the chains of the nobles were as heavy and oppreſſive as thoſe of the king; and, in the room of one formidable monſter of power over the whole city, were alarmed with the view of a number of petty tyrants, who had ſtarted up in every quarter.

The oath, therefore, that Brutus impoſed upon the aſſembly, never to ſuffer another king to reign in Rome, was, in effect, little better than mere parade. It ſerved indeed to calm the fears, and appeaſe the murmurs, of a ſimple and ignorant populace, with the charms of a new ſyſtem, but not to enlarge the circle of general liberty. The annual change of the conſuls was of uſe, in alleviating the dread of hereditary deſpotiſm; but it gave the

[8] So called, ſays Pomponius, (D. 1. 2. 2. 16.) "Quia reipublicæ conſulunt."—Προβουλους. Dion. Hal. 4. 74. & 5. 1. But the duties of their office are much better defined by Cicero in the following paſſage: "Regio imperio "duo ſunto: iique præeundo, judicando, "conſulendo, prætores, judices, conſules "appellantor. Militiæ ſummum jus habento, nemini parento. Ollis ſalus populi "ſuprema lex eſto." De LL. 3. 3.

The two firſt were L. Junius Brutus, and L. Tarquinius Collatinus. Liv. 1. 60. & 2. 1.

[9] The principles upon which the conſular government was meant to be founded, are well explained in the ſpeech of Brutus. Dion. Hal. 4. 73, &c.

patricians

patricians a ſtill fairer opportunity of being all tyrants in their turn. The "comitia" were indulged with the right of electing theſe, as well as all other, magiſtrates [10]; but the influence of the higher ranks in the elections greatly diminiſhed the value of that privilege.

The conſuls were not only inveſted with all the external ſplendor of the regal office, but with the actual plenitude of the regal power; and all this, at the expreſs motion of Brutus himſelf [11]. In virtue of theſe conceſſions, they not only claimed a general precedence, but likewiſe a right of controul and coërcion, over all the other great officers, the tribunes only excepted [12]. They were the ſupreme judges in all cauſes, criminal and civil; had the adminiſtration of the public revenue; convened, and preſided over, the ſenate; propoſed the ſubject of debate, and carried its decrees into execution [13]. They had a ſimilar power in all matters, the cognizance whereof belonged to the people in general; they convoked their aſſemblies, acquainted them with the reſolutions of the ſenate, collected the votes, and declared the majority [14]. The laws were likewiſe, originally, enacted in their own names; which, with other characteriſtical marks of abſolute ſovereignty [15], made them objects

[10] Και μην τας αρχας ὁ δημος διδωσι τοις αξιοις· ὁπερ εστι καλλιστον ασθλον εν πολιτειᾳ καλοκαγαθιας. Polyb. 6. 12.

[11] He is repreſented by the hiſtorian as ſpeaking to the following effect: Ημιν σκοπουμενοις τις αρχη γενησεται των κοινων κυρια, βασιλειαν μεν ουκετι καταστησασθαι δοκει, αρχοντας δε δυο καθ' ἑκατον ενιαυτον αποδεικνυναι, βασιλικην εξουσιαν ἑχοντας. Dion. Hal. 4. 84.

[12] Ὁι μεν ὑπαλοι—παρουσιν εν Ρωμη, πασων εισι κυριοι των δημοσιων πραξεων· ὁι τι γαρ αρχουσιν ὁι λοιποι παντες ὑποταττονται και πειθαρχουσι τουτοις, πλην των δημαρχων. Polyb. 6. 10.

[13] Ὁυτοι τα καθεστηκοτα των διαβουλιων αναδιδοασιν, ουτοι τον ὁλον χειριζουσι των δογματων επιτελεσιν. Polyb. 6. 10.

[14] Και μην ὁσα δει δια του δημου συντελεισθαι των προς τας κοινας πραξεις αγγελλων, τουτοις καθηκει φροντιζειν, και συναγειν παντας εις εκκλησιας, τουτοις εισφερειν τα δογματα, τουτοις βραβευειν τα δοκουντα τοις πλειοσι. Polyb. 6. 10.

The ſame power is expreſſed in the following, as well as ſeveral other paſſages in the Latin hiſtorians: "Concilio populi a magiſtratibus dato." Liv. 3. 71.

[15] Ὁτε μεν εις την των ὑπατων ατενισαιμεν εξουσιαν, τελειως μοναρχικον φαινεσθαι· ειναι και βασιλικον. (Polyb. 6. 9.) And further, after enumerating the various prerogatives of the conſuls, he adds, ὡς εικοτως ειπειν αν ὁτι τις εις ταυτην αποβλεψειε την μεριδα, διοτι μοναρχικον απλως και βασιλικον εστι το πολιτευμα. Polyb. lib. 6. 10.

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of ſuſpicion and terror to the whole people[16]. Theſe tranſcendent magiſtrates, thus placed in the front of the ſtate, became the main pillars of the ariſtocracy; a form of government, which, from the beginning, was evidently the principal view of the authors of this memorable revolution[17].

A. U. C. 310.

In the following century, the people, from a wanton deſire of trying new experiments, ſubſtituted ten officers in the place of the conſuls, under the title of Military Tribunes[18]. But, though this change occaſioned a difference in the name and number of the ſupreme magiſtrates, the nature and extent of their power, and the form of the civil government, ſtill continued the ſame; it will be ſufficient, therefore, to paſs it over with this ſlight notice.

Notwithſtanding the manifeſt tendency of the conſular power towards ariſtocracy, upon the original principles of its inſtitution; it muſt not be denied, that immediately upon the death of Brutus, for the ſhort time that Valerius continued the ſole conſul, and from his ardent zeal for their welfare, obtained the honorable title of Poplicola[19], the commons were gratified with a few laws, very propitious to the intereſt of their own order; particularly one, whereby perſons accuſed of crimes were allowed to appeal from the ſupreme magiſtrates, to the general aſſembly of the people, without whoſe conſent no capital puniſhment whatſoever could be inflicted. By this,

[16] Thus we find the tribune Terentillus Arſa complaining; "Conſulare imperium— "nimium nec tolerabile liberæ civitati,—no- "mine enim tantum minus invidioſum, re "ipſa propè atrocius quam regium eſſe; "quippe duos pro uno dominos, acceptos, "immoderatâ, infinitâ poteſtate, qui ſoluti "atque effrenati ipſi, omnes metus legum, "omniaque ſupplicia verterent in plebem." Liv. 3. 9.

[17] Ἀριστοκρατίας δὲ γενομένης οἱ πρῶτοι τὴν βασιλικὴν ἀρχὴν παραλαβόντες ὑπάλοι, &c. ſays the hiſtorian; to ſignify, that this was the form of government firſt intended, upon the inſtitution of the conſuls. Dion. Hal. 5. 1.

[18] Liv. 4. 7.

[19] "Latæ deinde leges non ſolum, quæ "regni ſuſpicione conſulem abſolverent, ſed "quæ adeo in contrarium verterent, ut po- "pularem etiam facerent. Inde cognomen "factum *Poplicolæ* eſt." Liv. 2. 8.

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the conſuls were reſtrained to the right of impriſonment only [20]; a power, indeed, far ſhort of the former, but often employed to very cruel and tyrannical purpoſes. Though the foregoing law was no inconſiderable acquiſition to the popular cauſe, yet the wiſe and diſpaſſionate author, to ſhew his own ſenſe of the true nature of civil liberty, made another, to impoſe a penalty upon thoſe, who diſobeyed the commands of the conſuls [21]; a wiſe regulation, which ſtrengthened the hands of the executive power, by a juſt temperament of liberty with ſubordination.

But theſe gleams of orderly and wholeſome policy ſoon expired with this truly great patriot; after whoſe death, few other of the patricians had either the will, or the integrity, to vindicate the rights of an indigent, and, as they perhaps thought, a contemptible, multitude. This popular law, among others, was loſt in the diſorders that followed ſoon after; till revived, upon the extinction of the decemviral power, by a worthy deſcendant of its original author [22], from which time it continued in its full vigor, ſo long as the free ſpirit of the antient conſtitution left room for its operation.

About this time Caius Papyrius, the "Pontifex Maximus," who, by virtue of that high office, had the cuſtody of the public records, undertook to compoſe a collection, or digeſt, of all the laws that had

"Jus civile "Papyrianum."

[20] "Ante omnes de provocatione adverſus "magiſtratus ad populum." Liv. 2. 8. Μία δὲ ταῦτα τοῦτους ἐγράψατο, ὧν μάλιστα μὲν ἰσχυρὰς ἐποίησε τὰς πολλὰς, ὁ τὸν δήμον ἀπὸ τῶν ὑπάτων τῷ φεύγοντι δίκην ἐπικαλεῖσθαι δίδους. Plut. in Popl. p. 225. The operations of this law are thus deſcribed by Pomponius: "Qui tamen (ſc. conſules) "ne per omnia regiam poteſtatem ſibi vin-"dicarent, lege lata factum eſt, ut ab iis "provocatio eſſet, neve poſſent in caput civis "Romani animadvertere injuſſu populi: "ſolum relictum eſt iis ut coërcere poſſent, "ut in vincula publica duci juberent." D. 1. 2. 2. 16. & Muel. ib.

[21] Ὁ δὲ γραφὴς κατὰ τῶν ἀπειθούντων τοῖς ὑπατικοῖς, οὐχ ἧττον ἔδοξε δημοτικὸς εἶναι, καὶ πρὸς τῶν πολλῶν μᾶλλον ἢ δυναστῶν γεγράφθαι· ζημίαν γὰρ ἀπειθείας ἔταξε βοῦν πτῆλε καὶ δυοῖν ὀβολοῖν ἀξίαν. Plut. in Popl. p. 225.

[22] "Conſules L. Valerius, et M. Horatius,— "alium conſularem legem de provocatione, "unicum præſidium libertatis, decemvirali "poteſtate everſam, non reſtituunt modo, ſed "etiam in poſterum muniunt." Liv. 3. 55.

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been enacted, at various times, and upon various occaſions, during the reigns of the antient kings; and which, from this cauſe, and, eſpecially, from the tyrannical irregularity of the late reign, were now in a ſtate of confuſion. This uſeful work was the firſt ſource of the written civil law, and, from its author, was called "Jus civile Papyrianum[23]." There have indeed been many doubts who this Papyrius was, and at what time this body of laws was compiled. Pomponius places him in the reign of Tarquinius Priſcus, others in that of Superbus; but the moſt probable opinion is, that he did not enter upon this undertaking, till after the commencement of the republic[24].

The people, as it appears, had not, then, fully taſted the ſweets of political liberty and order; their triumph over tyranny was, as yet, far from being complete, and their chief comfort was, that their tyrants were but annual[25]. Though they formed a very conſiderable branch of the conſtitutional legiſlature, even under the monarchy; yet the kings themſelves, either by virtue of their own ſupremacy, or by their influence, which is often much more than equivalent to legal authority, enacted many laws, which came down to theſe times, under the name of "Leges regiæ." And though, by the abolition of the invidious title and office of king, the people might have been deceived into a notion of being releaſed from their obedience to regal laws, yet it is more than probable, that many of theſe very laws were ſtill in force, under the character of the antient uſages and cuſtoms of paſt times[26]. As the interpretation likewiſe, and

[23] "Non," ſays Pomponius, "quia Papyrius de ſuo quicquam ibi adjecit; ſed quod leges, ſine ordine latas, in unum compoſuit." D. 1. 2. 2. 2. Grav. O. J. 1. 31.

[24] Heineccii Obſerv. hiſt. de jure Papyriano. Muel. in D. 1. 2. 2. 36. Roſ. Ant. Rom. 8. 5.

[25] "Libertatis originem inde magis, quia annuum imperium conſulare factum eſt, quam quod diminutum quicquam ſit ex regiâ poteſtate, numeres. Omnia jura, omnia inſignia primi conſules tenuere." Liv. 2. 1.

[26] "Exactis deinde regibus lege Tribunicia, omnes leges hæ exoleverunt," ſays Pomponius,

and application, of theſe laws lay entirely at the mercy of their ariſtocratical magiſtrates, the lower orders were then really expoſed to more ſevere oppreſſions, than they had ever ſuffered under their monarchs.

All fears of a reſtoration of the regal government being removed, by the death of Tarquin, the nobles let looſe the whole torrent of power upon the helpleſs plebeians [27]. A moſt ſhocking inſtance of barbarity, exerciſed by a creditor upon the perſon of an inſolvent debtor, drove the people, already too well prepared for ſedition, to an extremity of rage and deſpair; provoked them to deſert the city in a large body, and to a retire to hill, a ſhort diſtance from Rome; where they encamped, with a firm reſolution to renounce their mother-country, in which they had been denied the common privileges of nature [28].

A defection ſo univerſal, and at a time too when the ſtate was embroiled with a formidable enemy, after much contention, brought down the high ſtomachs of the ſenators; and obliged them to accept a reconciliation, under the mortifying conditions of aboliſhing the debts, and of permitting the plebeians to create five new officers, called Tribunes of the People [29]. The two firſt of theſe were C. Licinius and L. Albinus, who were impowered to chuſe three other colleagues;

Pomponius, "iterumque cæpit populus incerto " magis jure et conſuetudine ali, quam per " latam legem; idque propè viginti annis " paſſus eſt." D. 1. 2. 2. 3.

[27] The tyranny of the patricians, in this age, is well deſcribed by a very elegant and judicious hiſtorian: "Injuriæ validiorum, et " ob eas diſceſſio plebis a patribus, aliæque " diſſenſiones domi fuere jam inde a prin- " cipio: neque amplius, quam regibus ex- " actis, dum metus a Tarquinio et bellum " grave cum Etruriâ poſitum eſt, æquo et " modeſto jure agitatum: dein, ſervili im- " perio patres plebum exercere; de vita " atque tergo, regio more conſulere; agro " pellere, et, cæteris expertibus, ſoli in im- " perio agere. Quibus ſævitiis, et maximè " fenoris onere oppreſſa plebs, cum aſſiduis " bellis tributum ſimul et militiam toleraret, " armata montem ſacrum atque Aventinum " inſedit; tumque tribunos plebis, et alia " ſibi jura paravit." Sall. Hiſt. Fragm. 1.

[28] Dion. Hal. 6. 26. et ſeq. Liv. 2. 23. Grav. O. J. 1. 27. D. 1. 2. 2. 20. & Muel. ib. Roſ. Ant. Rom. 7. 23.

[29] Dion. Hal. 6. 89.

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among whom was Sicinius Bellutus, a riotous, ſtubborn demagogue, and the future cauſe of much outrage and ſedition [30].

Tribunes.

To enable them to exert their power with fuller effect, the whole aſſembly, before they broke up the camp, were obliged to take a ſolemn oath, both for themſelves and their poſterity, to preſerve the perſons of the tribunes ſacred and inviolate. The articles of this important convention were confirmed by ſacrifices. The hill itſelf was conſecrated to Mars, from whence it was called "Mons Sacer;" and the law there made "Lex Sacra," and likewiſe "Lex Tri-" bunicia," from the officers there created.

A. U. C. 260.

The tribunitian office was extremely humble and modeſt in its outward appearance; it affected no pomp, it coveted none of the ſplendid trappings of magiſtracy; though whatever it wanted in dignity, was amply made up in conſequence. As far as it contributed to protect the poor from the oppreſſions of the rich, and to keep the ſeveral conſtituent powers of the ſtate within their juſt limits, it was certainly of ſingular uſe in the political ſyſtem, and deſerved the warmeſt zeal and ſupport of every generous friend to rational liberty. But when it tranſgreſſed its original bounds, and aſſumed prerogatives incongruous with the nature and deſign of its firſt appointment, it then became a ſcourge and nuiſance to the whole commonwealth [31].

The tribunes, being mere creatures and agents of the plebeians, were never deſigned for members of the ſenate; and accordingly, at their firſt creation, were only allowed ſeats at the door, where they ſate, and examined the decrees of the fathers, leſt any thing ſhould be paſſed, that might affect or injure their conſti-

[30] Liv. 2. 23.

[31] "Seditionum omnium cauſas tribuni-" cia poteſtas excitavit, quæ ſpecie quidem " plebis tuendæ, cujus in auxilium compa-" rata eſt, re autem dominationem ſibi ac-" quirens, ſtudium populi ac favorem agrariis, " frumentariis, judiciariis legibus aucupa-" batur." Luc. Flor. 3. 13.

tuents.

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tuents[31]. But this reſtraint was of very ſhort duration; for being generally ſelected out of the moſt daring, undaunted, and perſevering ſpirits, they ſoon made a further advance, and gained an actual admiſſion into the houſe, within two years after their firſt inſtitution[32]. Of this there are various inſtances upon record, and one in particular, of a very early date, wherein the tribunes were not only permitted, but were even called upon by the conſuls, to deliver their ſentiments[34] upon the law for admitting the plebeians to a ſhare of the conſular dignity; on which occaſion the tribune Canuleius expoſed the ſelf-intereſted deſigns of the heads of the ariſtocracy, in a ſtrain that does high honor both to his courage and underſtanding.

Having ſucceeded thus far, they next aſſumed the power of convoking the ſenate by virtue of their own authority, and of propoſing whatever queſtions they pleaſed for the ſubject of their deliberations; a privilege, originally belonging to the conſuls only[35]. Neither were they content with this; for, by a ſteady and gradual courſe of encroachments, any ſingle tribune was at liberty to put a ſtop to the operations of the whole ſenatorial body; ſo as not only to prevent it from paſſing a decree, but even from conſulting thereon, or from aſſembling for that purpoſe in any manner whatſoever[36]. Their A. U. C. 305.

[32] "Illud quoque memoria repetendum "eſt, quod tribunis plebis intrare curiam "non licebat; ante valvas autem poſitis "ſubſelliis, decreta patrum attentiſſima cura "examinabant; ut, ſi qua ex eis improbaſ-"ſent, rata eſſe non ſinerent." Val. Max. 2. 2. 7.

[33] Middleton on the Rom. Sen.

[34] Ὡς δὲ καθηκεν ὁ χρονος εν ᾧ το προβουλευμα ἰδιᾳ γενισθαι, συνκαλισαντες οἱ ὑπατοι την βουλην, και πολλας ὑπερ ὁμονοιας και ευκοσμιας ποιησαμενοι παρακλησεις, πρωτος απεδωκαν λογον τοις εισηγησαμενοις δημαρχοις του νομου. Dion. Hal. 11. 57.

[35] The beginning of this encroachment is fixed by the hiſtorian to the conſulſhip of M. Valerius, and Sp. Virginius; at which time, πολλακις προσκρουσαντα τοις δημαρχοις προς τους ὑπατους συνεστη παλιν, εξ ὧν ισχυον οἱ δημαρχοι παρασκευαζοντες τι της ὑπατικης δυναστειας. τοτε μεν γαρ εμπροσθεν χρονον εκκλησιας μονον ησαν οἱ δημαρχοι κυριοι, βουλην δε συναγαγειν ἡ γνωμην ἀγορευειν ουκ ἐξην αυτοις, αλλ' ην των ὑπατων τουτο το γερας. οἱ δε τοτε δημαρχοι προῖοι συγκαλειν επεβαλοντο την βουλην. Dion. Hal. 10. 31. From henceforth it became a maxim of the conſtitution, "Nam et tribunis "plebis ſenatus habendi jus erat." A. Gell. 14. 8.

[36] Εαν εις υπηκοον των δημαρχων, ουχ ὁτιον επι τιλος ἀγαγειν τι δυναται των διαβουλιων ὁ συγκλητος, αλλ' ουδ' συνεδρευειν ἡ συμπορευεσθαι το παραπαν. Polyb. 6. 14.

importance,

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importance, therefore, beginning to be felt by all ranks of people in the commonwealth, the patricians, even thoſe of conſular dignity, ambitiouſly courted the ſame popular honors, and were favored in their pretenſions by ſome of the tribunes themſelves[37].

But among the daily uſurpations of theſe reſtleſs demagogues, and their daring invaſions of the rights of the other orders, the moſt pregnant in miſchief was, that peremptory negative upon every act of the legiſlature, claimed not only by the whole tribunitian body aggregate, but by each conſtituent of it for himſelf. The obvious effect of this, was the eſtabliſhment of ſo many petty ſovereigns, not leſs independent of the ſtate, than of each other; who, by their divers jarring operations, had always ſufficient power to impede the ſprings of government, if they could not accelerate them. Though they ſometimes ſuppreſſed a bad law, they as often prevented a good one; and could, at pleaſure, ſubject the will of a mighty people, to the fantaſtic humor of one obſtinate ringleader, or peſtilent declaimer.

Whatever charms, therefore, this famous inſtitution might have had, in the eyes of all levelling advocates of republican independency, when accompanied with ſuch a boundleſs train of uncontrollable privileges, it was, in fact, the moſt pernicious policy that could have been adopted by a people, whoſe favorite object was equal and univerſal liberty. It made the head a ſlave to the feet. It deſtroyed that harmonious ſubordination of the ſeveral ranks of the community to each other, that regular gradation of power, which is the ſoul of every perfect government; and, by ſuch unnatural inverſions, became,

[37] "Novi tribuni plebis in cooptandis "collegis patrum voluntatem foverunt. "Duos etiam patricios, conſulareſque, Sp. "Tarpeium, et A. Aterium cooptavere." Liv. 3. 65.

This paſſage of Livy ſeems to have eſcaped the notice of Gravina, who ſays expreſsly, "Nemo niſi plebeius creari poterit." O. J. 1. 27.

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in the end, one of the grand cauſes of the ruin of that very liberty, it was created to defend [18].

The only expedient, which the infant wiſdom of thoſe ages could ſuggeſt, to obviate the inconvenient effects of this unruly power, was to confine the exerciſe of it within the bounds of the city itſelf [19]. This was a line which it ſeldom attempted to paſs, even in the moſt factious times; neither were the tribunes themſelves, in ſtrictneſs of law, ever allowed to ſleep without the walls, even for a ſingle night. In caſes, therefore, of any violent oppoſition, if the conſul, or other preſiding magiſtrate, had influence enough to draw the people to any ſmall diſtance into the country, the firebrand of ſedition was, for that time, extinguiſhed.

The firſt forty years, immediately ſucceeding this intereſting change in the government, preſent to our view a moſt gloomy ſcene of uproar and anarchy, in which the different elements of the future conſtitution lay ſtruggling together in one general maſs, each of ſufficient force to keep alive the univerſal ferment; but none endowed with ſufficient vigor to gain a deciſive victory over its conflicting oppoſites, and to call forth the whole into ſymmetry and order. In one part of the picture, the eye is relieved with a diſplay of the moſt enchanting beauties; in another, offended with the moſt diſguſting deformities. Here—a train of glorious heroes, boldly venturing their lives for the welfare of their darling country; extending the arms of compaſſion and mercy even to their moſt inveterate enemies; comforting the friendleſs, the fatherleſs, and widows; diffuſing plenty and happineſs through the whole ſtate,

[18] To this we may very properly apply the following juſt and beautiful obſervation of Livy: "Adeo moderatio tuendæ libertatis, dum æquari velle ſimulando, ita ſe quiſque extollit, ut deprimat alium, in difficili eſt; cavendoque ne metuant homines, metuendos ultra ſe efficiunt: et injuriam a nobis repulſam, tanquam aut facere, aut pati neceſſe ſit, injungimus aliis." Liv. 3. 65.

[19] Οὐδε ἀρχαὶ τῶν τιχῶν τοῖς δημάρχοις ἐφιεσαν. Appian. de Bell. Civ. p. 447. edit. Hen. Steph. 1592.

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and retiring into honorable poverty themſelves:—There—a group of tyrannical lordlings and mercileſs uſurers, trampling upon the precious rights of the helpleſs plebeians; devouring their houſes with extortion and rapine; and wallowing in eaſe and luxury themſelves, at the expence of the diſabled ſoldier and the famiſhed mechanic.—Tribunes, on the contrary, courageouſly ſtanding forth in defence of their oppreſſed fellow-citizens; nobly vindicating the privileges of humanity, againſt the rude aſſaults of their potent and haughty rivals; and as often exciting the people to cauſeleſs tumults; audaciouſly inſulting the moſt illuſtrious generals, and moſt virtuous magiſtrates; arraigning them at the bar of juſtice; condemning, baniſhing, or putting them to ignominious deaths; from a mere wanton ſpirit of revenge and licentiouſneſs.

A. U. C. 296.

In theſe ſtruggles, however, the ſcale generally preponderated in favor of the popular party; who, in the end, not contented with the original allotment of tribunes, eagerly demanded to have them doubled [40]. This was a boon which the people were not more ſollicitous to obtain, than the ſenate willing to grant; wiſely perceiving, that the multitude were now become the dupes of their own madneſs and indiſcretion. Private intereſt, or other mean perſonal motives, having, at all times, had too much influence in the diſpenſation of this capricious power, it was eaſy to foreſee, that ſuch an augmentation of their number would ſoon be fatal to their unanimity; and that theſe giddy champions of liberty, in ſome ungovernable fit of ſedition, might be as likely to vent their ill-humor upon each other, as to unite together againſt their ſuperiors. There was a chance alſo, that, among ſo many, ſome might be found of better temper and underſtanding; and of weight enough to moderate the fury of their boiſterous colleagues. Theſe expectations were happily anſwered: the torrent of faction would often ſubſide, by the mere power of counteraction; and private diſcord be thus productive of public harmony.

[40] Liv. 3. 30.

CHAP. II.

Laws of the Twelve Tables.——"Decemviri."——Their Tyranny and Extinction.

CHAP. II.

THOUGH the creation of this popular office of tribune was a moſt deſirable acceſſion to the cauſe of the people, and led the way to ſeveral future extenſions of public liberty; it was far from being a preſent remedy for divers material grievances, ſtill the ſubjects of juſt complaint. The laws, all this while, continued vague and precarious, and the adminiſtration of juſtice was partial and arbitrary. The conſuls were imperious, the tribunes rude[1]. The patricians and plebeians were more warmly buſied in irritating each other with mutual invectives, than in promoting the tranquillity of the republic in general. But the time was now approaching, when the empire of law was to extinguiſh that of man[2], when the dawn of political wiſdom was to break forth upon this diſconſolate ſcene of ignorance and confuſion; and to light this fortunate nation into the paths of true glory; a glory, more ſplendid and durable than ſhe could poſſibly derive from her moſt important ſucceſſes, and moſt brilliant triumphs. A. U. C. 291.

Terentius[3] Arſa, an honeſt and enterpriſing tribune, in the abſence of the chief maigſtrates, began boldly to inveigh againſt the pride of the nobility, and the tyranny of the conſular government; and propoſed that a committee ſhould be created, for the purpoſe of drawing up a body of laws, to reſtrain this exorbitant power, and to oblige the conſuls

[1] The ſtate of the Roman commonwealth at this period, together with the conteſt that followed, are finely deſcribed both by Dionyſius (9. 3, &c.) and Livy (3. 9, &c.), and deſerve the peruſal of every learned and curious reader.

[2] "Imperia legum, potentiora quam hominum." Liv. 2. 1.

[3] Livy calls him Terentillus. Liv. 3. 9.

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themſelves to adminiſter juſtice by eſtabliſhed rules[4]. The nobles inſtantly took the alarm at a propoſal, which aimed ſo direct and fatal a blow at their former influence and authority. They complained, in their turn, of the unfair advantage taken by Terentius; that he was going out of the road of his office; that his attempt was inſolent, unjuſt, and ſeditious. But neither force nor artifice, neither threats nor intreaties, could ſtagger the reſolution of this inflexible patriot. A law ſo popular, equitable, and ſalutary in itſelf, being ſtrenuouſly ſupported by the whole weight of tribunitian perſeverance, after a tedious altercation of ten years, gained a complete triumph over ſenatorial obſtinacy[5].

This great point once gained, the next difficulty was, how it ſhould be carried into execution; and at laſt it was agreed, by the joint conſent of the ſenate and tribunes, that three ambaſſadors ſhould be ſent, at the public expence, to the Greek cities in Italy, and likewiſe throughout all Greece, to collect materials from thoſe flouriſhing republics; eſpecially from Athens[6]. The conſtitution of this city in particular, had lately received great improvements, under the adminiſtration of thoſe wiſe and illuſtrious ſtateſmen, Ariſtides, Themiſtocles, and Cymon; and was, at this time, under the patronage of the no leſs famous Pericles; advantages, which had raiſed her to the higheſt pitch of glory, and political perfection, ſhe ever acquired.

Theſe delegates returned, after a journey of two years; and the people, eager to enjoy the immediate fruits of their well-concerted policy, earneſtly preſſed for the appointment of commiſſioners, to digeſt the materials thus collected. The nobles, however, ſtill jealous of their own conſequence, exerted their utmoſt endeavours to obſtruct the execution of this laudable deſign. Their pretence was,

[4] Roſ. Ant. Rom. 8. 6.
[5] Gray. O. J. 1. 32.
[6] Dion. Hal. 10. 48.—ad fin.

that

that ſuch innovations were dangerous; and that the antient laws were ſufficient, without further alterations, to anſwer all the purpoſes of civil government. In the end, however, the propoſal of Appius Claudius was accepted, to commit the management of this important work to a ſelect body of *ten* of the moſt eminent patricians (in which number were included himſelf and the three ambaſſadors), who, from hence, were nominated "Decemviri." This committee was to be inveſted with the whole ſovereign power for one year, during which, all other magiſtracies, not even the tribuneſhip excepted, were to ceaſe. Decemviri.

The "decemviri" entered upon their office with great attention to the buſineſs of it; and, with the aſſiſtance of one Hermodorus, a Grecian exile[7], compoſed a new code, conſiſting partly of entire laws tranſcribed from the Greek originals; partly of ſuch as were altered and accommodated to the manners of the Romans; and partly, of the laws of the antient kings, ſuch eſpecially as concerned religion and private rights; rejecting all thoſe that were favorable to monarchical power. Theſe were then engraved on ten tables of braſs, and fixed up in the moſt conſpicuous part of the "Forum," for the convenient peruſal of the whole people; and having been examined and approved by the ſenate, they received a ſolemn ratification, in a general aſſembly of the Centuries[8]. Laws of the Twelve Tables.

The people, highly pleaſed with the apparent equity and moderation of their decemviral governors, and finding the neceſſity of ſeveral additions to the firſt ten tables, ſufficient to furniſh materials for two more, propoſed to elect another magiſtracy of the ſame ſort, for the enſuing year, at the head of which they, very impoliticly, continued Appius Claudius.

This ſecond decemvirate ſo far anſwered the end of their appointment, as to draw up the two additional tables that were expected:

[7] D. 1. 2. 2. 4.

[8] Liv. 3. 33.

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but, in order to accompliſh their own wicked and arbitrary deſigns, and to excite an irreconcilable enmity between the two orders, they inſerted one law, to forbid the patricians and plebeians from intermarrying with each other. A law, ſo extremely partial and unpopular, ſo repugnant to every idea of republican equality, could not fail to become the immediate object of univerſal clamor and deteſtation. The commonalty, very properly, conſidered it as a brand of contempt and infamy ſet upon their whole order, in defiance of the cleareſt principles of natural juſtice; and, by a moſt glorious and invincible perſeverance, obtained a repeal, in leſs than ſeven years after it was made.

The account of this remarkable event is recorded at large by the two great hiſtorians[9]; who have preſerved the ſubſtance of the ſpeech, ſuppoſed to have been delivered by the tribune Canuleius, that, to his immortal honor, had the courage to ſtand forth the champion of theſe inviolable rights of his fellow-citizens, againſt this moſt ſelfiſh and audacious effort of ariſtocratical inſolence. This valuable relique of antient Roman oratory muſt ſtrike every reader, of true feeling, with the higheſt pleaſure and admiration, whether for the manlineſs of its eloquence, the livelineſs of its irony, or the cogency of its arguments; and well deſerves to be remembered, as an example truly worthy of imitation, in all ſucceeding ages and governments, when, and wherever, the like attempts ſhall be made, to lay ſuch unnatural reſtraints upon the common privileges of humanity and ſocial union.

The intriguing Appius, inſpired with new hopes by this renovation of his authority, ſo managed his colleagues, by flattering their ambition, that he prevailed upon them to engage, by a moſt ſolemn oath, to ſupport each other againſt all oppoſition; and to make the decemvirate perpetual, in ſpite both of

[9] Dion. Hal. 11. 57. Liv. 4. 1, 2, 3.

ſenate

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ſenate and people [10]. But the horrid barbarities of this knot of tyrants, and particularly the infamous attempt of the profligate Appius upon the beautiful and innocent Virginia, once more inflamed the ſpirit of the injured Romans; and provoked them to aboliſh this pernicious oligarchy, happily before it had well taken root, in the third year after its commencement [11]. A. U. C. 304.

The laws, however, thus formed under their care and inſpection, having been approved, and confirmed, by the general conſent of the whole nation, deſervedly ſurvived their abandoned editors; and conſtituted the foundation of that vaſt fabric of the civil law, which was afterwards erected thereon. The original tables were deſtroyed, either in the general deſolation of the city by the Gauls [12], or in the civil confuſions that enſued in later ages; and it is quite uncertain, whether any perfect copy ever ſurvived thoſe calamities, ſo as to deſcend entire to poſterity. But as the Romans were very aſſiduous in collecting every tranſcript and fragment of theſe precious monuments of antient policy; and as it was made a common exerciſe for the youth to learn, and rehearſe them, by heart [13], many of them were gradually engraven upon the minds of the people in general; and thus reſcued from oblivion by the force of tradition. Several other conſiderable remains, ſtill fortunately preſerved in the writings of the old lawyers, antiquaries, and hiſtorians, have been extracted from thoſe authentic repoſitories; and digeſted, as near as poſſible, according to their original order, by divers able civilians of ſucceeding times, particularly Gravina [14].

[10] D. 1. 2. 2. 24. & Muel. ib.
[11] Liv. 3. 42—54.
[12] Liv. 6. 1.
[13] "Diſcebamus enim, pueri xij. ut carmen neceſſarium." Cic. de LL. 2. 23.
[14] O. J. 2.

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"Jus Pontificium," *or Eccleſiaſtical Law of Rome.*

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Jus Sacrum, ſeu Pontificium.

ALL the tables before-mentioned (taking them according to Gravina's arrangement), the tenth only excepted, extend to civil rights, and form the "Jus Legitimum," or in other words, the *common*, or *temporal* law; the tenth is the only one that concerns religious matters, and makes a part of the "Jus Sacrum," or "Pontificium," the *eccleſiaſtical* law, of the Roman ſtate[1]. This diſtinction is clearly pointed out by the beſt antient authors[2]; and ſhould be carefully attended to by every learned reader, who means to proſecute his inquiries, with that accuracy and intelligence, which the ſubject ſo well deſerves. The ſources of the former, it is hoped, have been ſufficiently marked already; it remains, therefore, to give ſome ſhort account of the latter, which is eſſentially different, both in its origin and authority; and is of the higheſt antiquity, coëval even with the ſtate itſelf.

A belief of a ſupreme, eternal Being, which conſtitutes the firſt general idea of all religion, is ſo univerſally inherent in the very nature of man, that whatever pains may be taken, by the pride of human reaſon, and the arrogance of metaphyſical ſpeculation, to ſtifle the growth of it; there is no people under heaven ſo loſt in ſtupidity and ignorance, ſo abandoned to vice and infidelity, as not to perceive ſome beams of the Divinity glimmering through the darkneſs of their underſtandings, or to feel ſome faint impulſes of him upon their hearts. This religion, therefore, howſoever it may happen to be debaſed by the falſehoods and abſurdities of polytheiſm, will not fail to produce a powerful influence over the conſciences of

[1] Roſ. Ant. Rom. 8. 6.

[2] Cic. pro Domo, 12, 13, 14.

its

its votaries, to give weight to its precepts, and conſequence to its miniſters.

Romulus, though by profeſſion a mere ſoldier, did not want penetration to ſee, that a due ſenſe of religion was the beſt foundation of political ſecurity. Though he left much to be done by his ſucceſſor, yet himſelf drew the outline of an eccleſiaſtical eſtabliſhment, which, conſidering the general blindneſs of thoſe times, reflects no ſmall honor upon his legiſlative character. The religion itſelf, indeed, was mere paganiſm, though not ſo much corrupted by the obſcene legends, and licentious ceremonies of the Grecian theology [3], as in later ages; but was more ſimple, and better calculated to promote decency, morality, and reverend notions of thoſe deities, which were made the objects of their worſhip.

Each "curia," as already obſerved [4], was a diſtinct pariſh of itſelf; had its own gods, temple, and prieſt, with its days of reſt and feſtivity; on which occaſions, the inhabitants met to ſacrifice, and to feaſt upon the victims [5], in a kind of religious communion. Even private families had their tutelary deities, and rites peculiar to themſelves, which were taken notice of and protected by the pontifical laws [6]. So high a notion had Romulus of the dignity and ſanctity of the prieſthood, that he annexed the ſupremacy in all religious matters to the royal perſon [7]. He was, likewiſe, particularly ſtrict in the appointment of the inferior orders; expreſsly prohibiting the purchaſe of ſo ſacred an office with money, or the deciſion of it by

[3] Τους δε παραδιδομενους περι αυτων μυθους, εν οις βλασφημιαι τινες εισι κατ' αυτων η κατηγοριαι, πονηρους και ασωφιλεις και ασχημονας υπολαβων ειναι, και ουχ ὁτι θεων αλλ' ουδ' ανθρωπων αγαθων αξιους, απαντας εξιβαλε, και παρισκευασε τους ανθρωπους κρατιστα περι θεων λεγειν τε και φρονειν, μηδεν αυτοις προσαπτοντας αναξιον επιτηδευμα της μακαριας φυσεως. Dion. Hal. 2. 18.

[4] P. 8.

[5] Συνηθυν τι τοις ἱερευσιν αἱ φρατραι εις τας απομεριδεισας αυτοις θυσιας, και συνεστιωνθο παλιν τας ἑορτας επι της φρατριακης ἑστιας. Dion. Hal. 2. 23.

[6] "Sacra privata perpetua manento. "Deorum manium jura ſacra ſunto." Cic. de LL. 2, 9. & 19.

[7] Ἱερων και θυσιων ἡγεμονιαν ἑχειν, και παντα δι' εκεινου πρατλεσθαι, τα προς τους θεους ὁσια. Dion. Hal. 2. 14.

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lot. None were qualified for the choice till they were paſt fifty years of age; and ſuch, only, as were diſtinguiſhed by birth, fortune, purity of manners, and comelineſs of perſon[8]. Beſide the curial, or pariſh, prieſts, ſeveral others were likewiſe created, whoſe miniſtry was of a more general nature; and to ſo great a length does Romulus appear to have carried his fondneſs for the order, as to draw this obſervation from the hiſtorian, "that no inſtance could be produced, "of ſo large a number of prieſts having been ever eſtabliſhed in a "new-erected city[9].

Numa was religious from reflexion and philoſophy. His notions of the Divine Being were, in ſome inſtances, both pure and ſublime. The favorite object of his reign was to refine and improve upon the religious inſtitutions of his predeceſſor; though his mind was not ſufficiently enlightened, to introduce the worſhip of the one only true God. On the contrary, he was too great an encourager of polytheiſm; for he not only permitted the Romans to retain the gods of their anceſtors, but erected many temples and altars to others, before unheard-of[10]. Therefore, though he had great merit in ſimplifying the ceremonial part of religion, by the abolition of idolatry, he greatly multiplied the objects of popular ſuperſtition: a ſuperſtition, indeed, innocent enough in an age like that, where manners were kept in ſuch good ſubjection by the mere influence of religion; and where every new-created deity (if I may

[8] Επειδα, ὁτι των ἀλλων φαυλως πως και απειρισκεπλως ὡς επι πολυ ποιουμενων τας αἱρισεις των επιτηδειοτατων τοις ἱεροις, και των μεν αργυριω το τιμιον αποκηρυττειν αξιοντων, των δε κληρῳ διαιρουντων τους ἱερεις, ἐκεινος ουτε ωνητας χρημαἳων ἐποιησε τας ἱερωσυνας, ουτε κληρῳ μεριστας, ἀλλ' ἐξ ἑκαστης φρατρας ενομοθετησεν αποδεικνυσθαι δυο τους ὑπερ πεντηκοντα ἐτη γεγονοτας, τους γενει τε προὐχοντας των ἀλλων, και ἀριτῃ διαφορους, και χρημαἳων περιουσιαν ἐχοντας αρκουσαν, και μηδεν ηλαττωμενους των περι το σωμα. Dion. Hal. 2. 21.

[9] Ἐν γουν ἀλλῃ πολει ποκτισῳ τοσουτους ἱερεις και θεραπευτας των θεων ευθυς αποδειχθεντας ουδεις αν ειπειν ἐχοι. Dion. Hal. 2. 21.

[10] Πολλα μεν αποδεικνυς τεμενη τοις μηπω τιμων τυγχανουσι θεοις, πολλους δε βωμους και ναους ἱδρυομενος, ἑορτας τε ἑκασῳ αυτων αποσημους, και τους επιμελησομενους αυτων ἱερεις καθιστας, ἁγνειας τε και θρησκειας και καθαρμους, και τας ἀλλας θεραπειας και τιμας παν πολλας νομοθετων, ὁσας υθ' Ελληνες ουτε βαρβαροι ἐχει πολις, υδ' ἀι μεγιστον επ' ευσεβειᾳ φρονουσαι πατρι. Dion. Hal. 2. 63.

be

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be allowed the expreſſion) became a new terror to a particular vice, or the patron of a particular virtue.

The miniſters of religion were divided into eight claſſes [10]; but the only one that immediately concerns the preſent ſubject, is that of the "Pontifices." Theſe were erected by Numa into a college, and the original number of them was only four. They were, for many years, choſen entirely out of the patrician families; till two tribunes of the name of Ogulnii, ambitious, like the reſt of their brethren, of introducing their own order to an equal participation, with the nobles, of every honor of the ſtate, propoſed a law to create four additional ones out of the plebeians [11]. To theſe Sylla added ſeven more; but, out of reſpect to thoſe of the more antient eſtabliſhment, they were diſtinguiſhed by the title of "Pontifices Minores."

"Pontifices."

A. U. C. 453.

The whole college was governed by a ſuperior, called "Pontifex Maximus," choſen by the "comitia centuriata." This was always eſteemed the moſt reſpectable office, in the whole ſcale of honors in the Roman ſtate. It was coveted by all the dictators, and other great men, who pretended to a ſuperiority over the reſt of their fellow-citizens, in the later times of the republic. Upon the next great revolution in the government it was aſſumed by Auguſtus [12]; and worn by him and his ſucceſſors, as one of the moſt ſplendid ornaments of the imperial dignity, till the time of Gratian; who is ſaid to have been the firſt Chriſtian emperor that declined it, from a ſuperſtitious conceit of its being incompatible with the temporal power [14].

"Pontifex Maximus."

It is much doubted by our modern writers [15], whether the Chriſtian emperors ever accepted this exalted title at all, eſpecially from

[10] Dion. Hal. 2. 63—72.

[11] Liv. 10. 6. Roſ. Ant. Rom. 3. 22.

[12] Suet. in Oct. 31. Dio Caſſ. 54. 27.

"Cæſaris innumeris, quem maſuit ille mereri,
"Acceſſit titulis, pontificalis honos."
Ovid. Faſt. 3. 419.

[14] Των φουλφικιων καλα το συνηθες περιαιρουμενον Γρατιανον την στολην, απεστεραλο την αιτησιν, αθεμιτον ειναι Κριτιανω το σχημα νομισας. Zoſimus, lib. 4. p. 250. edit. Oxon. 1679.

[15] Lardner's Jewiſh and Heatheniſh Teſtimonies, &c. v. 4. p. 259, &c. Univ. Ant. Hiſt. v. 16. 8vo. p. 376. note (S).

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thoſe of their own perſuaſion; or whether they paid that compliment to their pagan ſubjects only, with whom the practice had been cuſtomary: but it is very probable, that this weak and over-ſcrupulous renunciation of a ſupremacy in religion, ſo properly and naturally belonging to every crowned head, might have been a powerful encouragement, among others, to the future uſurpation of it by the pope. Gravina, who is every where a zealous advocate for the papacy, highly commends the *pious* example of Gratian, for declining the pontifical habit; though he juſtifies, or rather pretends to excuſe, the exerciſe of that power by the former emperors, even the Chriſtian ones, as being the only method of keeping the pagan ſoldiers ſteady to their oaths and other military obligations [16].

In compliment to the ſolemn and venerable office of the prieſthood, every order of it was exempted from military ſervice, and all other burdenſome employments of the ſtate; and many of theſe privileges were extended even to their wives and families [17]. The "pontifices," therefore, being the firſt in rank, had more leiſure to attend to civil and political concerns, and to the ſtudy of the conſtitution, as well as to the duties of their particular profeſſion. The rudeneſs and ſimplicity of thoſe early ages, and that fierce and martial ſpirit which pervaded the whole Roman people, were effectual obſtacles to the progreſs of letters; and, conſequently, gave very great advantage to thoſe orders of men, who, from their peculiar ſituation, were more at liberty to employ their time in ſpeculative and rational inquiries. Having thus accumulated a much greater ſhare of uſeful knowledge than the reſt of their fellow-citizens, and being ſuppoſed likewiſe to have ſome more immediate intercourſe with the heavenly beings, their deciſions were received as ſo many infallible oracles. Theſe univerſal prejudices in their favor did not barely give them influence, but alſo authority and

[16] De Rom. Emp. 7.

[17] Dion. Hal. 2 21, 22.

juriſdiction; much greater, indeed, than would be ſtrictly conſiſtent with more ſound and enlightened policy: but ſuch is the tribute that prieſtly artifice, in all ages of darkneſs, took care to extort from popular ignorance and ſuperſtition.

In this manner then did the pontifical college acquire an unbounded ſway over the chief operations of civil government, and little leſs than an entire independence for itſelf. The members of it, by their ſuperior qualifications, had made themſelves the ſole interpreters of the law, for ſeveral of the earlier centuries [18]; and the ſtanding council for all ſuch as were in need of advice, not only in religious, but alſo in temporal, concerns. A proficiency, therefore, in legal knowledge was one of the moſt eſſential parts of their duty. The two profeſſions, likewiſe, were almoſt always united in the ſame perſon [19]. Of this various examples are ſtill preſerved in the antient claſſic authors, ſuch as the Scævolæ [20], Torquatus [21], Craſſus [22], Coruncanus [23], Scipio [24], and ſeveral others, who had all borne the ſacred office of "Pontifex Maximus;" and whoſe memories have been tranſmitted to poſterity, in the higheſt terms of honor and reverence, for having graced that eminent ſtation, by a comprehenſive knowledge of the laws of their country.

A late learned civilian of our own [25], juſtly thinks that the "pontifices" were "not miniſtering prieſts," like the other inferior orders, "but a college of eccleſiaſtical judges;" an opinion, which he ſupports by the moſt indubitable authorities. "Pontificium "Jus [24], Pontificum Auctoritas [25]," and other ſuch like terms, expreſſive of their *juridical* capacity, are frequently found in all the

[18] D. 1. 2. 2. 6.

[19] "Sæpe, inquit Publii filius, ex patre "audivi, pontificem neminem bonum eſſe, "niſi qui jus civile cognoſſet." Cic. de LL. 2. 19.

[20] Id. ib.

[21] Val. Max. 8. 3.

[22] Cic. de Or. 3. 33.

[23] Taylor in tit. Jus Pont.

[24] Cic. pro Domo, 14.

[25] Ib. de LL. 19.

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beſt-informed writers of antiquity. And, indeed, this was no more than what was univerſal among the Germans [26], Britons, and other Celtic nations of the north-weſtern parts of Europe, though always treated by the Romans in the light of barbarians. Among theſe, the Druids enjoyed the ſame honors, the ſame exemptions from military ſervice, and exerciſed a judicial, if not a legiſlative, power, even more extenſive than that of the Roman "pontifices;" as they ſeem to have been almoſt the only judges of the nation, as well criminal as civil [27]. A pre-eminence extremely natural and obvious in all communities, wherever ſuperſtition is the leading principle of human actions.

From the authorities before quoted it appears, that the Roman "pontifices" had a kind of ſovereign juriſdiction in matters of the higheſt importance [28]. They were the ſupreme judges in religious controverſies, over all perſons of what rank ſoever; and could reſolve doubts, give directions concerning public worſhip, and make, abrogate, or alter the laws relative to ſacred matters, at pleaſure: ſo that they were inveſted with a legiſlative power within themſelves, with regard to the immediate objects of their own inſtitution, wholly independent of the body of the people [29]. They had an abſolute right to viſit, and ſuperintend the behaviour of, all the officers of religion, to examine their qualifications, and puniſh their offences, at their own diſcretion; neither would an appeal lie from their ſentence, to any ſuperior court whatſoever [30].

They

[26] Tacit. de Mor. Germ. c. 7.

[27] "Fere de omnibus controverſiis publi-
"cis privatiſque conſtituunt; et ſi quod eſt
"admiſſum facinus, ſi cædes facta, ſi de hæ-
"reditate, de finibus controverſia eſt, iidem
"decernunt, præmia pœnaſque conſtituunt." Cæſ. de Bello Gall. 6. 13.

[28] Μεγιστην—ἱερατειαν και ἐξουσιαν ἐχοντες; and a little further, Εισι δε των μεγιστων πραγματων κυριοι. Dion. Hal. 2. 73.

[29] Δικαζουσι γουν τας ἱερας δικας ἁπασας ἰδιωτας τε και αρχουσι και λειτουργους θεων· και νομοθετουσιν ὁσα των ἱερων αγραφα ὀντα και ἀνεθιστα, κρινουσι δ' ἀν επιτηδεια τυγχανειν αὐτοις φανειη νομων τε και θεσμων. Id. ib.

[30] Liv. 1. 20. Cic. pro Domo, 1. et pene per totum.

Τας τε ἀρχας ἁπασας ὁσαις θυσια τις και θεραπεια θεων ανακειται, και τους ἱερεις ἁπαντας ἐξεταζουσιν· ὑπηρεσιας τε αυτων και λειτουργιας, ὁις χρωνται

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They claimed a juriſdiction, likewiſe, in adoptions (a practice very common among the Romans), under pretence that the new-adopted perſons were to be partakers of the religious rites and ceremonies of the families into which they were admitted [31].

Marriages, in all ages and countries, were accompanied with ſome kind of religious ſolemnities, in which the attendance of the prieſt was always required. Theſe therefore fell, at the very beginning, within the verge of pontifical cognizance; and the ſacred college had a right, of courſe, to determine upon the propriety of the marriage itſelf, and of the ſeveral degrees of conſanguinity and affinity, within which the parties were prohibited to marry at all [32].

For a ſimilar reaſon, ſepulchral matters were another great object of their power [33]; by which they could enforce any teſtamentary directions relative to that ſubject [34]; neither could any corpſe, when once buried, be dug up, or removed, without their permiſſion [35].

To them, likewiſe, was committed the truſt of drawing up the annals; of digeſting the hiſtory of the times [36]; and of regulating the calendar. In conſequence of this, it was their province to ſettle what days were proper for the diſpatch of juridical buſineſs, or for a ceſſation from it, called "dies legitimi, faſti," and "ne-"faſti;" *i. e.* terms and vacations. Their office it was to preſcribe

προς τα ιερα, ους φυλαττουσι μηδεν εξαμαρτανειν παρα τους ιερους νομους· τοις τε ιδιωταις οποσοι μη ισασι τους περι τα θεια η δαιμονια σεβασμους, εξηγειται γινονται και προφηται· και ει τινας αισθονται μη πειθομενους ταις επιλογαις αυτων, ζημιουσι προς ικατον χρημα ερωνης· εσι τε αυτοινθυνοι πασης δικης τε και ζημιας, ουτε βουλη λογον αποδιδοις ουτε δημω. Dion. Hal. 2. 73.

31 Cic. pro Domo, paſſim.

32 Tayl. tit. Jus Pont.

33 Cic. de LL. 2. 19.

34 "Quamvis ſtricto jure nulla teneantur "actione hæredes ad monumentum faciendum, tamen principali vel pontificali autoritate compelluntur ad obſequium ſupremæ "voluntatis." D. 5. 3. 50. 1.

35 "Oſſa, quæ ab alio illata ſunt, vel "corpus, an liceat domino loci effodere vel "eruere ſine decreto pontificum, ſeu juſſu "principis, quæſtionis eſt? Et ait Labeo, "expectandum vel permiſſum pontificale, "ſeu juſſionem principis: alioquin injuriarum fore actionem adverſus eum, qui "ejecit." D. 11. 7. 8. pr.

36 Cic. de Orat. 2. 12.

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the forms and modes of proceedings in courts of juſtice, which, for very obvious reaſons, they always kept profound and inviolable ſecrets among themſelves [37].

Such were the general objects of the "Jus Sacrum," or eccleſiaſtical law of the Romans, and of the ſeveral branches of the pontifical juriſdiction. We find it accurately deſcribed by the above-mentioned authors, and particularly by Cicero, who was a perfect maſter of the whole ſyſtem, and has left a minute detail of the moſt material parts of it [38], much to the ſatisfaction of the connoiſſeurs in eccleſiaſtical antiquity; who may now eaſily diſcern the cloſe analogy between antient and modern Rome, in many particulars of great conſtitutional importance. From hence, likewiſe, they will obſerve, that the "Pontifex Maximus," of Chriſtian Rome, has very faithfully imitated his pagan predeceſſor, in the exerciſe of a ſovereign, independent power in matters of religion; though he has ſeldom thought fit to follow the example of his wiſdom in enacting laws, or of his moderation in the execution of them. A truth, one would think, that ſhould effectually put to ſilence all ignorant and bigotted advocates of papal ſupremacy.

CHAP. IV.

"Fori Diſputationes."——"Reſponſa Prudentum."——"Legis Actiones."——"Jus Civile Flavianum."——"Jus Civile Æli-anum."

THOUGH the twelve tables were the baſis of the whole fabric of Roman juriſprudence [1], there was yet a wonderful obſcurity, even in their original compoſition [2], that took off a great

[37] Cic. de LL. 2. 19. D. 1. 2. 2. 6.
[38] De LL 2. 8. & 19.
[1] Cic. de Orat. 1. 45.
[2] A. Gell. 20. 1.

deal

deal from their general utility. Some kind of interpretation was therefore wanted, from the very beginning, either to explain thoſe difficulties; or to fix the uſe, and regulate the application, of the laws themſelves, to that infinite variety of new and complicated caſes, which neceſſarily aroſe in the daily intercourſe of the ſeveral members of the ſame community with each other.

The moſt antient interpreters of the law, as we have already ſeen, were the college of "Pontifices[3]." Theſe, however, muſt not be miſtaken for a convent of religious and ſuperſtitious drones, deſtined by their inſtitution to a recluſe, contemplative, and unprofitable courſe of life; on the contrary, they were generally men of the firſt rank and family, the moſt diſtinguiſhed for their experience and political knowledge, and ſome of the moſt uſeful and active members of the whole ſtate. They mixed with the reſt of the world, and made themſelves of conſequence to it, by the ſuperiority of their abilities, and the importance of their ſervices to their fellow-citizens[4].

Reſpect and pre-eminence, derived from ſo laudable a ſource, naturally excited an emulation in many other great ſtateſmen, though ſtrangers to that reverend body, to copy their example. Theſe ſeem, at firſt, to have formed themſelves into private ſocieties or aſſemblies, in order to moot ſuch obſcure and ambiguous queſtions of law, as were occaſionally referred to their conſideration, till they could agree upon ſome certain and fixed ſenſe, in which they ought in future to be underſtood. Though they acted herein under no public authority, yet the univerſal reputation of their wiſdom and integrity gave ſuch weight to their deciſions, that theſe were, from time to time, gladly adopted by the courts of juſtice, and received, by a kind

"Fori Diſputationes."

[3] P. 60.

[4] The whole of this ſubject is treated of very learnedly in a work intitled, "De Veteri Jure Pontificio Urbis Romæ." Lib. 4. Græv. Theſ. Ant. Rom. vol. 5.

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of general acquieſcence, into the body of unwritten, or cuſtomary law, under the name of "Fori Diſputationes[5]," and ſometimes of "Jus Civile" at large[6].

"Reſponſa Prudentum."

In the earlier times, theſe great ſages of the law contented themſelves with delivering their opinions in private, to ſuch only as had immediate occaſion to conſult them[7]. But as juridical buſineſs began to multiply, and the utility of this practice came to be more generally underſtood, the law grew up gradually into a kind of regular ſcience. Men of the higheſt diſtinction then made it their *public* profeſſion[8]; and taught it openly in their own houſes, as in ſo many ſchools, to all ſuch as were deſirous of becoming their pupils[9]. A proficiency in legal knowledge was conſidered, in thoſe ages, as one of the greateſt ornaments of a ſtateſman, and the ſureſt road to honors and magiſtracies: ignorance of it, on the other hand, was diſgraceful to every perſon of birth and fortune, particularly to pleaders and orators[10]. From this period, therefore, may be dated the origin of that ſpecies of law, particularly known under the title of "Reſponſa Prudentum."

[5] D. 1. 2. 2. 5. & 35. & Muel. ib. Grav. O. J. 41. & 42. Tayl. tit. Reſ. Prud. Hein. Ant. Rom. 1. 2. 35.

[6] —"Aut eſt proprium Jus Civile, quod "ſine ſcripto, in ſolâ prudentium interpre-"tatione conſiſtit." D. 1. 2. 2. 12.

[7] D. 1. 2. 2. 35.

[8] "Sine controverſia et magna eſt, et "late patet, et ad multos pertinet, et ſum-"mo in honore ſemper fuit, et clariſſimi "cives *ei ſtudio* etiam hodie præſunt." Cic. de Orat. 1. 55.

Thus, in another place, "In jure cavere, "conſilio juvare, atque hoc ſcientiæ genere "prodeſſe quam plurimis, vehementer et ad "opes augendas pertinet, et ad gratiam." Cic. de Off. 2. 19.

[9] Cicero ſpeaks of this employment (which was in very high repute in his days) with the warmeſt encomiums. "Senectuti "vero celebrandæ et ornandæ quid honeſ-"tius poteſt eſſe perfugium, quam juris in-"terpretatio? Equidem mihi hoc ſubſidium "jam inde ab adoleſcentia comparavi, non "ſolum ad cauſarum uſum forenſem, ſed "etiam ad decus atque ornamentum ſenec-"tutis; ut cum me vires (quod fere jam "tempus adventat) deficere cœpiſſent, ab "ſolitudine domum meam vindicarem." To which he afterwards ſubjoins, "Eſt enim, "ſine dubio, domus juriſconſulti, totius ora-"culum civitatis." De Orat. 1. 45.

[10] Cic. de Orat. paſſim. D. 1. 2. 2. 43.

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It is ſomewhat difficult, indeed, to ſeparate theſe from the "Fori "Diſputationes;" as they were much the ſame in point of authority, and ſeem to differ in no other circumſtance, than that of antiquity, and in being, the one, the acts of a ſociety, the other, of individuals; yet, perhaps, even this diſtinction may have no better foundation than conjecture. But as all former writers have ſpoken of them under different denominations, though without ſpecifying where the real difference lies, it ſhould ſeem beſt to adhere to the antient account, till ſome good reaſon can be ſhewn to juſtify a departure from it.

The firſt of theſe *public* profeſſors was Tiberius Coruncanus [11], who flouriſhed in the firſt Punic war, and was the firſt plebeian ever raiſed to the dignity of "Pontifex Maximus [12]." His example was followed by many of the moſt diſtinguiſhed characters of the times in which they ſeverally lived [13]; among whom we find the celebrated names of the Ælii, Marcus Cato, Brutus, Mucius, Tubero, Sulpitius, Trebatius, and divers others, of immortal memory, who are well known to all ſuch as are converſant in the writings of Cicero, Horace, and other authors of the claſſical ages [14]. To the great regret of poſterity, no complete body of the works of any one of them has deſcended to later times; though large detached fragments of their opinions and reſponſes have been preſerved by their ſucceſſors in the ſame profeſſion, particularly by thoſe of the ſecond and third centuries; from whoſe collections they were afterwards borrowed by Juſtinian, and diſperſed, under their reſpective heads, in different parts of the Digeſt.

A. U. C. 500.

Such was the buſineſs of the great lawyers and ſtateſmen, during the time of the republic. But as they had acted, hitherto, entirely in their private capacities, their anſwers and deciſions carried with them no other authority, than what they derived from their

[11] D. 1. 2. 2. 35. & 38.
[12] Cic. de Orat. 3. 33. Vel. Pat. 2. 128. O. J. 1. 47—72.
[13] Cic. Off. 2. 19.
[14] D. 1. 2. 2. 35—47. & Muel. ib. Grav.

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own intrinſic merit and good ſenſe. But Auguſtus extended the compliment to them much further; for he ſelected a certain number of the moſt eminent, to whom he gave a commiſſion to become public interpreters of the law, with power even to controul the decrees of the judges by their own arbitrary deciſions. A practice, which, though very honorable to the profeſſion itſelf, was extremely detrimental to the eſtabliſhed written law; as it deſtroyed the ſimplicity of the antient courſe of juſtice, and introduced infinite confuſion and variety of opinion in the adminiſtration of it; as will be ſeen much more at large, when we reſume this ſubject under the next period.

"Legis Actiones."

The uſage of interpreting the laws, in the manner juſt now explained, had been of great ſervice in clearing away many of their difficulties, and in aſcertaining their true ſenſe and meaning. But ſomething more was ſtill wanting to give them vigor and activity, and to ſuit them to forenſic uſes. For this purpoſe, therefore, theſe learned practitioners contrived certain eſtabliſhed writs or forms, by the help of which, method and regularity were preſerved in the courſe of judicial proceedings, and juſtice was uniformly adminiſtered with fuller force and effect. Theſe obtained the name of "Legis," or "Legitimæ, Actiones [15]."

The "Pontifices," whoſe buſineſs it was to regulate the calendar, eaſily aſſumed, from thence, the power of fixing the terms or days of buſineſs. As the principal expounders of the law, they were the propereſt perſons likewiſe to digeſt the forms and modes of the pleadings; and it ſeems to have been a conſtant cuſtom among them,

[15] Roſ. Ant. Rom, 8, 4. Grav. O. J. 1. 33. & 2. 80.

The origin and uſe of them are thus very accurately explained by Pomponius: "Deinde ex his legibus, eodem tempore fere, "actiones compoſitæ ſunt; quibus inter ſe "homines diſceptarent, quas actiones, ne "populus prout vellet inſtitueret, certas ſolenneſque eſſe voluerunt, et appellatur hæc "pars juris Legis Actiones, i. e. Legitimæ "Actiones." D. 1. 2. 2. 6. & Muel. ib.

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for one of their body to be chosen annually, on purpose to attend the courts of justice, and to see that the proceedings in them were conducted in due order [16].

A. U. C. 449.

These forms of practice seem to have lain in a very confused and indigested state, for more than a century after their first invention; till the famous Appius Claudius Cæcus, who, among his other honors, was a member likewise of the pontifical college, reduced them all into one uniform collection [17]. The "pontifices," however, from a desire of preserving their own consequence, still kept this useful work closely locked up in their own archives, so that none could obtain a sight of it without their express permission.

"Jus Civile Flavianum."

This being, therefore, a matter of universal complaint [18], it gave encouragement to one Cneius Flavius (who was a kind of confidential secretary of Appius, and had free access to his papers) to make a surreptitious transcript of this curious and valuable work for his own use, which he afterwards published: and as an exact knowledge of the "fasti," or days of pleading, was a point of great moment to suitors, he exposed them upon a table, in full view of the courts of justice, for the general convenience of all parties concerned [19]. This collection, from hence, acquired the title of "Jus Civile Flavianum [20]," and was esteemed so acceptable a piece of service to the state, that Flavius, though of very mean extraction, was created successively tribune, senator, and curule ædile.

"Jus Civile Ælianum."

This publication being so well received, and found of such general utility; new questions likewise arising daily, that were not re-

[16] "Omnium tamen harum et interpretandi scientia, et actiones, apud collegium "Pontificum erant; ex quibus constituebatur *quis quoque anno præesset privatis*; et "fere populus annis prope centum hac consuetudine usus est." D. 1. 2. 2. 6. & Muel. ib.

[17] D. 1. 2. 2. 7. & Muel. ib. Grav. O. J. z. 79.

[18] Cic. pro Mur. 11. Liv. 9. 46.

[19] "Civile jus, repositum in penetralibus "pontificum evulgavit (sc. Flavius), fastosque circa forum in albo proposuit, ut "quando lege agi posset, sciretur." Liv. 9. 46.

[20] D. 1. 2. 2. 7. & Muel. ib. Cic. pro Mur. 11. & 12. & ad Att. 6. 1.

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ducible within the meaning of the rules then extant; Caius Ælius, a lawyer of conſiderable eminence, ſoon after the time of Flavius, publiſhed a ſecond formulary, compoſed by himſelf, and therefore called "Jus Civile Ælianum[21]."

Theſe important ſecrets being now once brought to light, the cuſtom of preſerving and perpetuating ſuch new forms as were occaſionally adopted, appears, from henceforward, to have become more frequent; not only in conſequence of the progreſſive increaſe of juridical buſineſs, which naturally called for ſome new correſpondent forms; but, likewiſe, from ſeveral writs of a ſimilar kind, actually exiſting, at this day, in different parts of the Digeſt, and carrying evident marks, upon the face of them, of a more recent date, than the period of which we are now treating.

The preciſeneſs and formality of theſe actions have often expoſed them to ridicule, and furniſhed many fair topics of pleaſantry to the wits of the more polite and refined ages, particularly to Cicero; who, in divers paſſages of his works, affects to hold them in the higheſt contempt. Thoſe who ſcrupulouſly adhered to theſe niceties in the courſe of their practice, he is pleaſed ſometimes to banter, in very lively and ſevere ſtrokes of humor; charging them with perverting the plain language of common ſenſe by their ſubtle diſtinctions, with quibbling upon words, and cavilling even at ſyllables[22]; little thinking that he was then drawing his own picture, that he was, himſelf, the beſt ſpecimen of his own deſcription, and the moſt deſerving object of his own ſatire. After all, it muſt be fairly owned, that the ſame accuſation is too ſtrictly applicable to many other

[21] D. 1. 2. 2. 7. & Muel. ib. Grav. O. J. 1 33.

[22] "Juriſconſultus," ſays he, "ipſe per "ſe nihil, niſi leguleius quidam cautus et "acutus, præco actionum, cautor formula- "rum, auceps ſyllabarum." Cic. de Orat. 1. 55.

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other able advocates, in all ages and countries; when obliged to defend a bad cauſe, in defiance of truth and ſelf-conviction. This artful orator, however, who never wanted ingenuity to juſtify whatever opinion it ſuited his preſent purpoſe to maintain, makes no ſcruple of recanting this raillery, and of confeſſing that the knowledge and interpretation of the laws was one of the moſt honorable employments in the commonwealth [22]. He even goes ſo far as to own, that forms are indiſpenſably neceſſary to facilitate the adminiſtration of juſtice [23]; and that whoever neglected the obſervance of ſuch preſcribed rules of practice, deſervedly loſt his cauſe; or, in the language of the Engliſh bar, was nonſuited [24].

But the emperor Conſtantine the Second, from a miſtaken attempt at reformation, forbad their uſe by a particular reſcript, with an expreſs reference to the criticiſm formerly paſſed upon them by Cicero [25]; upon which a very learned French lawyer makes the following pertinent obſervation: "That although the antient law "was, perhaps, too much encumbered with forms, yet theſe were "infinitely more tolerable, than that confuſion which would naturally "enſue, if ignorant people were left entirely to themſelves, to ſeek "for redreſs of injuries, by ſuch methods only, as were ſuggeſted by "their own diſcretion: for the uſe of them is ſo great in all courts "of juſtice, that, even if the old ones were to be taken away, they "would of courſe revive, either in their firſt, or ſome new, ſhape; "or elſe be ſupplied by others of a more modern invention [26]."

[22] "Cum multa præclara majorum, tum "quod optime conſtituti juris civilis ſum-"mo ſemper in honore fuit cognitio atque "interpretatio." Off. 2. 19.

[23] "Sunt jura, ſunt formulæ de omnibus "rebus conſtitutæ, ne quis in genere injuriæ, "aut in ratione actionis errare poſſit, expreſſæ "ſunt enim ex uniuſcujuſque damno, dolore, "incommodo, calamitate, injuria, publicæ "a prætore formulæ, ad quas privata lis ac-"commodatur." Pro Roſc. Com. 8.

[24] "Ita jus civile habemus conſtitutum, "ut *cauſa cadat* is, qui non, quemadmodum "oportet, egerit." De Inv. Rhet. 2. 19.

[25] "Juris formulæ *aucupatione ſyllabarum* "inſidiantes, cunctorum actibus radicitus "amputentur." C. 2. 58. 1.

[26] Cujac. paratit. Cod. ad 2. 58. 1. de form.

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The "Legis Actiones," and ſeveral other forms to be found in the ſyſtem of Roman judicature, deſerve the attention of our Engliſh lawyers, much more than they may be at firſt aware of; becauſe they bear a ſtrong analogy to many of thoſe legal forms, ſo much in uſe in the earlier times of our conſtitution, more immediately ſucceeding the Norman conqueſt; which are ſtill preſerved in "that moſt antient and highly venerable collection," as it is juſtly called [27], "the Regiſtrum Omnium Brevium." Theſe writs, it ſhould be remembered, had their origin in chancery [28]; a court, in that age, entirely under the government of eccleſiaſtics, who gave a partial preference to the Roman law, before the law of the land; and who, conſequently, would be more likely, as occaſion ſerved, to adopt, or imitate, their own favorite ſyſtem, than another, which they deſpiſed, and treated as barbarous.

To mention one ſtriking inſtance of the truth of this obſervation, the writ "de Ventre Inſpiciendo [29]," has a direct view to an antient Prætorian edict, ſtill preſerved in the Digeſt; abridged, indeed, and accommodated to the practice of an Engliſh court of juſtice, but evidently founded upon the ſame natural principle [30]: and it ſhould ſeem highly probable, that, upon a more diligent ſearch, many others of the ſame kind might be diſcovered, ſo as to form a very curious and inſtructive comment upon a great part of that collection. It is true, that an affected fondneſs for novelty, and improvement (as it is ſometimes thought) in judicial proceedings, hath brought many of theſe old writs into diſuſe; but they muſt yet command the veneration of every true lover of antiquity; eſpecially, as the real utility of them is ſo ably juſtified by our modern oracle of Engliſh juriſprudence; who ſays, that, in them, "every man, who is

[27] Blackſtone's Comm. v. iii. p. 183.

[28] For which reaſon it is called *Officina Juſtitiæ*. Ib. v. iii. p. 48 & 273.

[29] Reg. 227.

[30] D. 25. 4. 1.

" injured, may find a method of relief, exactly adapted to his own " caſe, deſcribed in the compaſs of a few lines, and yet without the " omiſſion of any material circumſtance [30]."

CHAP. V.

The principal Legiſlative Powers of the Roman State.——Methods of voting, and of enacting Laws.——" Leges.——" Plebiſcita."——" Senatuſconſulta."

IN the preceeding chapter we have taken a general view of the primitive ſources of the Roman law, as contained in the foregoing collections, viz. the Papyrian Law, the Twelve Tables, the " Legis " Actiones," and " Interpretationes Prudentûm, or " Fori Diſputa- " tiones;" which, together, conſtitute the *Antient Juriſprudence* [1].

But as the ſtate daily increaſed both in numbers and territory, and was perpetually extending her views to new objects, freſh matters naturally aroſe, that could not be comprehended within the ſenſe and deſign of the laws then in being. To ſupply theſe defects, therefore, it was neceſſary, as occaſion required, to enact many new ones; all which are reducible to the following ſpecies:

I. The firſt, ſuch as were paſſed at the inſtance of a ſenatorial magiſtrate, by the whole aggregate body of the people [2], ſenators and patricians, as well as plebeians [3], in whom alone the majeſty of the ſtate reſided. A law, thus enacted, was called " Lex," in its ſtrict and proper ſenſe. " Leges."

[30] Blackſt. ut ſupra.
[1] Grav. O. J. 1. 33.
[2] " Quod *Populus* Romanus, ſenatorio " magiſtratu rogante (veluti conſule), conſtituebat." I. 1. 2. 4.
[3] Grav. O. J. 1. 27.

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Legiſlation was a ſcience, among the antient Romans, cultivated with the greateſt circumſpection, and with every refinement of wiſdom and philoſophy. They had even laws to inſtruct them how to make laws. In framing and digeſting the original plan of a law, the maker of it thought himſelf obliged to obſerve every previous caution that good ſenſe could ſuggeſt, that it might come before the public, even in its firſt concoction, in the moſt perfect and unexceptionable form poſſible[4]. To this end, he conſulted upon it with his friends in private, leſt it ſhould contain any matter, detrimental to the general intereſt and will of the people; any contradictory clauſes, or ſuch as might weaken the force of any former law, not ſpecially deſigned to be repealed or altered by it; or even any partial words, that might tend to confer any particular advantages upon his friends, relations, or himſelf. Theſe delicate proviſions were introduced by the "Lex Æbutia," and "Licinia[5]."

Unity and ſimplicity, likewiſe, being another eſſential perfection of every law, the "Lex Cecilia" and "Didia" expreſsly forbade the inſertion of any matter repugnant to, or in any reſpect not correſpondent with, the tenor or purport of the law then in contemplation; as, by this incoherent mixture, the people might be obliged to receive as law, what they might not approve; or to reject, what they might deſire[6].

[4] Roſ. Ant. Rom. 8. 2. 7. Grav. O. J. 1. 29.

[5] This law is thus alluded to by the great orator: "Leges ſunt veteres, neque eæ conſulares—ſed tribunitiæ, vobis, majoribuſque veſtris vehementer gratæ atque jucundæ. Licinia eſt lex, atque altera æbutia: quæ non modo eum, qui tulerit de aliquâ curatione ac poteſtate, ſed etiam collegas ejus cognatos, affines excipit, ne eis ea poteſtas, curatiove mandetur." Cic. pro Lege Agr. 2. 8. et pro Domo, 20.

[6] Thus we find the force of this law explained by the ſame great authority, in the following queſtion: "Quæ eſt quaſi alia vis, quæ ſententia Cæciliæ legis et Didiæ, niſi hæc, ne populo neceſſe ſit in conjunctis rebus compluribus, aut id, quod nolit, accipere; aut id, quod velit, repudiare." Cic. pro Domo, 20.

It were well (to ſpeak with all due deference), if this very ſenſible rule were obſerved in a great modern aſſembly, where the practice of *tacking*, as it is commonly and quaintly ſtyled, has often occaſioned more confuſion, than the act itſelf was made to prevent.

When

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When occaſion called for a new law, of the kind now in conſideration, any of the higher magiſtrates[7] who choſe to undertake the charge of it, as the conſul, prætor, or dictator, having firſt obſerved the before-mentioned ceremonies, ſubmitted it to the inſpection of the ſenate. If approved there, it was *fixed* up publicly in ſome conſpicuous part of the Forum, for every one, that pleaſed, to conſider, and make himſelf maſter of, the contents[8]; and a general meeting of the "comitia" was appointed by proclamation, for the morrow of the third market-day immediately ſucceeding; *i. e.* after the expiration of twenty-ſeven days. This very uſeful regulation ſeems to have been firſt introduced by the law laſt mentioned; but being deficient in ſome eſſential particulars, a new one was enacted, not many years afterwards, to inflict much heavier penalties upon the neglect of this important ceremony of promulgation.

A. U. C. 655.

A. U. C. 691.

Rules, to prevent ſurpriſe in paſſing laws, are of the utmoſt benefit in every conſtitution, formed upon the principles on which the Roman then ſtood. For though a ſudden exertion of an unconſtitutional power, on ſome unforeſeen emergency, may put an effectual ſtop to a particular miſchief; yet as inſtances of that kind rarely happen, it is better even to loſe a ſmall temporary advantage, than to preclude the lawful conſtituents of the legiſlature, from an opportunity of deliberating upon the expedience of thoſe laws, from which the community is to derive its protection. Were the miniſterial, and more active, members of the ſtate to be indulged with the privilege of accelerating

[7] "Magiſtratus majores."

[8] This plain and eaſy mode of promulgation was in general uſe in thoſe primitive ages, and is frequently alluded to in the claſſic authors. Thus Ovid, with a clear reference to the Twelve Tables, ſpeaking of the golden age, that required no penal laws, obſerves,

"Nec verba minacia *fixo*
"*Ære* legebantur." Metam. 1. v. 89.

And from hence the words "*Figere*" and "*Refigere* Leges," ſignify to enact or abrogate laws. Thus Virgil likewiſe deſcribes a corrupt lawgiver under the following character:

"*Fixit* leges pretio, atque *refixit*." Æn. 6. 622.

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celerating the motions of the legiſlative body, at their own pleaſure; they might eaſily, under the plea of public neceſſity, hurry ſo large and unwieldy a multitude beyond the meaſure of their own natural paces; and thus drive them into acts of precipitation, fatal to their moſt valuable rights. Delays, in matters of this nature, how irkſome ſoever they may be to impetuous or narrow minds, are, in fact, the ſtrongeſt evidences of the true liberty of a nation; and ought to be obſerved, with every ceremonious formality, which the law has thought proper to impoſe. The wiſdom, therefore, of old Rome, in requiring theſe ſtrict pledges, for ſecuring the exerciſe of private judgment, is highly worthy of applauſe and imitation.—A Briton has not far to go, for a full exemplification of the ſalutary effects of the ſame principles [9].

The appointed time being arrived, the people aſſembled, according to their centuries, in the Campus Martius; the preſent buſineſs particularly belonging to the "comitia centuriata." The law being then proclaimed by the public crier, the magiſtrate who propoſed it, was expected to ſpeak firſt in its ſupport. After him, any other member of the aſſembly, having firſt obtained the leave of the preſident (a mere compliment of courſe), was at liberty to deliver his ſentiments likewiſe, on whichever ſide his own judgment inclined him [10]. To obviate any undue influence of the higher ranks over the lower, a private man had always the privilege

[9] The ill conſequences of departing from theſe eſtabliſhed rules, on occaſion of ſome extraordinary and irregular favors granted to Antony, are diſplayed by Cicero, in the following very maſterly addreſs to the ſenate, in which he, at one view, brings before them all the laws, ever made to ſecure the freedom of legiſlation. "Tribuni plebis tulerunt de "provinciis contra acta Cæſaris: ille bien-"nium, iſte ſexennium. Num etiam hanc "legem populus Romanus accepit? Quid? "Promulgata fuit? Quid? Nonne ante "lata, quam ſcripta? Nonne ante factum "vidimus, quam futurum quiſquam eſt "ſuſpicatus? Ubi lex Cæcilia et Didia? "Ubi promulgatio, trinundinum? Ubi pœ-"næ recenti lege Junia et Licinia? Poſſunt-"ne hæ leges ratæ eſſe, ſine interitu legum "reliquarum? Phil. 5. 3.

[10] Cic. de LL. 3. 4. Liv. 46. 21.

of

of ſpeaking before any other magiſtrate, except the particular propoſer of the law himſelf.

This practice was ſtyled "Legem ſuadere," and (vice verſa) "diſſuadere"[11]. The perſon who framed and brought in the law, was named the "Lator," and the advocates for it "Auctores"[12]. The ſpeeches being over, any one of the tribunes might interpoſe his negative, which was called "Interceſſio," or "Legi Intercedere"; and, by this act, a ſtop was put at once to all further proceedings upon it. But, if no objection was made, the prieſts, who always attended officially upon thoſe occaſions, firſt performed the uſual religious rites, and preparation was then made for voting, in the manner following.

Method of voting.

By the original conſtitution of Servius, as we have formerly ſeen[14], the claſſes were called to vote, according to their priority; but as this threw the whole effective power into the hands of the ſuperior ranks, another method was invented in time, much more equitable in itſelf, and more conſiſtent with the true ſpirit of a republican government. The names of the centuries being thrown promiſcuouſly into an urn, and blended well together by the hand of the preſiding magiſtrate, were then drawn out, one by one; from whence this method obtained the name of "Sortitio"[15]. The century firſt drawn was termed "Centuria Prærogativa," and had the right of voting firſt; the reſt, according to the ſame order[16].

What is here ſaid of the "comitia centuriata," is applicable to all the other "comitia (mutatis mutandis);" and the forms of proceeding in them, which are very curious and intereſting, have

[11] Liv. ut ſup.
[12] Cic. de LL. 3. 16.
[13] Liv. 27. 6. & 45. 21.
[14] P. 29.
[15] From this practice is taken that ſerious and beautiful metaphor of Horace,

"Æquâ lege neceſſitas
"*Sortitur* inſignes et imos,
"Omne capax movet urna nomen."
Od. 3. 1. 14.

[16] Roſ. Ant. Rom. 6. 14.

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been treated of, very learnedly, by the ſeveral authors quoted in the margin [17]. In the writers upon Roman antiquities, we likewiſe meet with "Comitia Calata;" which, nevertheleſs, are not a diſtinct ſpecies from the foregoing, but borrow their name only from the circumſtance of being ſummoned, or *called* together, on certain occaſions, wherein their ſanction was wanted; the antient Latin word "calare," derived from the Greek καλεω, having that import. All "comitia" were therefore "calata," in a general ſenſe; but, in a particular ſenſe, thoſe only were diſtinguiſhed by that appellation, which were convened for the buſineſs of religion; and for the purpoſe of making a peculiar ſpecies of wills [18].

This ceremony being finiſhed, the "Legis Lator," *i. e.* the magiſtrate who propoſed the law, commanded a ſecond proclamation to be made, for every man to repair to his reſpective century [19]. The prerogative century was then called out firſt, and after that the reſt, as their lots happened to fall. Antiently the votes were given "viva voce;" but this being often attended with great tumult and confuſion, and ſubjecting the lower orders too much to the influence of their ſuperiors, the more ſecret and expeditious method, by ballot, was introduced by the "Leges Tabellariæ [20]." Theſe were of four ſorts:

"Lex Tabellariæ."

A. U. C. 614. 1. "Lex Gabinia," for the election of magiſtrates.

—— 616. 2. "Lex Caſſia," for public trials.

3. "Lex Papyria," for making and repealing laws.

—— 646. 4. "Lex Cælia," for judgment in caſes of treaſons.

In conformity to theſe laws, the people were made to paſs in order, over ſome narrow planks, called "Pontes," into the "Septa," or

[17] Grav. O. J. 1. 28—30. Hopp. Vinn. & Hein. in L. 1. 2. 4. Hooke's Rom. Hiſt. lib. 1. c. 7. § 4. note (a).

[18] Roſ. Ant. Rom. 6. 1.

[19] Liv. 2. 56.

[20] Cic. de LL. 3. 16.

incloſures

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incloſures made to receive them; where certain officers, ſtyled "Di-"ribitores," delivered to every voter, two tablets, marked with capital letters, viz. one with U. R. *i. e.* "Uti Rogas," be the law paſſed as you have propoſed; the other with A. *i. e.* "Antiquo," I would have it as it was of old, let there be no innovation[21]. A ſuitable number of cheſts were placed within the "ſepta," into which each perſon threw whatever tablet he pleaſed. Another officer then took out the tablets of each century, and, for every one, made a point or mark in a correſpondent tablet kept by himſelf: the greateſt number of points determined the ſenſe of that century, and the greateſt number of centuries paſſed for the voice of the whole people, and either confirmed or rejected the law[22]. The ſame method was likewiſe obſerved in public trials before the people, when the tablets were inſcribed with the letters, A. *i. e.* "Abſolvo," C. "Condemno," or N. L. "Non Liquet." It was uſed alſo in elections, in which, inſtead of letters, were inſerted the names of the ſeveral candidates.

The "Leges Tabellariæ" were certainly a great improvement to ſuch a free ſyſtem of government, as the Roman then was; and Cicero pays the tablet the compliment, to call it the "ſilent aſſertor "of liberty[23]." But as the effuſions of oratory are not always the moſt ſure dictates of the heart, we find him, upon other occaſions, ſpeaking in a different ſtrain; and repreſenting theſe very laws in the moſt odious light poſſible, as deſtructive of the weight and conſequence of the nobility, and as encouraging popular inſolence and temerity[24].—No doubt he then uttered his real ſentiments.

[21] Roſ. Ant. Rom. 9. 31. Steph. Theſ. ſub verbo.

[22] Upon this is founded the common expreſſion,

"Omne tulit punctum;
Hor. Art. Poet. 343.

which is likewiſe adopted by the Engliſh language, "He has carried every *point*."

[23] Pro leg. Agr. 2. 2. & de LL. 3. 17.

[24] De Amic. 12. De LL. 3. 16. Pro Sext. 48.

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"Plebiſcita."

II. The ſecond ſpecies of occaſional written law was called "Ple-"biſcitum;" which was enacted by the plebeian body alone, at the rogation of one of their own magiſtrates [25]. The "plebiſcita" were originally made in the "comitia tributa," (in which the influence of the lower ranks were more predominant) at the inſtance of the tribunes; and were partial laws, binding the plebeians only [26]. But as the ſenators and patricians greatly oppreſſed them, by their attempts to erect an ariſtocratical power, they were provoked, as we have already ſeen, into ſeveral ſeceſſions, which produced many regulations in their favor.

A. U. C. 304.

The firſt of theſe was the "Lex Horatia," enacted at the inſtance of the conſuls Lucius Valerius Potitus and Marcus Horatius Barbatus, from the latter of whom it received its name; he having, probably, been the moſt active in procuring it. The ſenators were, by inclination, very ſtrongly againſt it, but were aſhamed to give much oppoſition, leſt they ſhould ſubject themſelves to the charge of partiality to their own power and intereſt; for, by this act, all laws, paſſed in the "comitia tributa," were put upon the ſame level, and were made equally binding, with thoſe in the "comitia centuriata [27]:" a law which, in the ſame proportion as it mortified the pride of the ſenators, increaſed the conſequence of their rivals, the tribunes [28].

A. U. C. 414.

It ſhould ſeem, as if this law had loſt its force in the courſe of one century; for we find, that, ſoon after the expiration of that interval, the dictator Publilius Philo (whoſe magiſtracy is celebrated for its

[25] "Quod *Plebs*, plebeio magiſtratu ro-"gante (veluti tribuno), conſtituebat." I. 1. 2. 4.

[26] D. 1. 2. 2. 8.

[27] Ἅπασι κυισθαι Ρωμαιοις ἐξ ισου. Dion. Hal. 11. 45. And, as ſays the Roman hiſtorian to the ſame effect, "Ut quod tri-"butim plebs juſſiſſet, populum teneret." Liv. 3. 55.

[28] Thus, ſpeaking of the preſent conſuls, he ſays, "Quorum conſulatus popularis, "fine ulla patrum injuria, nec ſine offenſione "fuit. Quicquid enim libertati plebis ca-"veretur, id ſuis decedere opibus crede-"bant." And then, ſoon after, of the law in queſtion, "Qua lege tribunitiis roga-"tionibus telum acerrimum datum eſt." Liv. ib.

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popularity [9]), enacted another law of the very ſame import with the foregoing. He carried likewiſe a ſecond, whereby the ſenate was obliged to ratify, by their previous aſſent, all laws that were to be referred to the "comitia centuriata," before the ſuffrages of the people were taken upon them; ſo that they ſhould ſtand in need of no further confirmation, or be in danger of any negative from the ſubſequent decrees of the fathers. This law was, therefore, called "Lex Publilia."

But as the patricians, jealous of their own power and privileges, ſtill continued to oppreſs the plebeians, and exerted their utmoſt endeavours to fruſtrate theſe popular laws, the people broke out into another ſedition, and feceeded to the Janiculum. To appeaſe this tumult, Quintus Hortenſius was created dictator, who thought proper to paſs another law, from him called "Lex Hortenſia;" whereby this long-conteſted point was finally ſettled, the foregoing laws confirmed, and the "plebiſcita" were indulged with the full force of the "leges," or laws in their ſtricteſt conſtitutional meaning [10]. A. U. C. 467.

This injudicious aggrandizement of the loweſt order of the ſtate, at the expence of all the reſt; together with a too promiſcuous communication of the higheſt honors and offices which ſoon followed; however flattering it might have been to plebeian vanity, gave a moſt fatal wound to the true intereſt of the community in general [11]. The influence of the ſenate being thus abridged, and the deference

[9] "Dictatura popularis, et orationibus in "patres criminoſis fuit, et quod tres leges "ſecundiſſimas plebi, adverſas nobilitati "tulit: unam, ut plebiſcita omnes Quirites "tenerent: alteram, ut legum, quæ comi-"tiis centuriatis ferrentur, ante initum ſuf-"fragium patres auctores fierent." Liv. 8. 12.

[10] Supp. ad Liv. 11. 26.

[11] That the democratical form predominated over all the reſt, is evident beyond doubt, from the teſtimony of Polybius, who lived and wrote about the time of the third Punic war; was an intimate friend of the ſecond Scipio; and, by a long reſidence in Rome, had acquired a perfect knowledge of the true principles of the conſtitution, as it then was. This author, ſpeaking of the ſhare

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deference to the provident counſels of the better ſort greatly diminiſhed, the blind and giddy multitude, releaſed from all further reſtraint, broke looſe into every extravagance of boundleſs liberty. Intoxicated with the exceſs of faction, they became the eaſy tools of their deſigning and ambitious demagogues; who having at firſt employed them to ſubdue their own rivals and antagoniſts, in the end made ſlaves of them all. The primitive conſtitution, thus loſt to its original virtue and purity; grown unwieldy, and fatigued with all thoſe viciſſitudes and diſtractions, which are ſo naturally appendant to this tumultuous and imperfect form of government; ſunk, at laſt, with its own weight, into the arms of military and arbitrary power [32].

"Senatus-Conſulta."

III. In a ſtate ſo conſtructed as the Roman, it is no wonder that the ſtruggles between the higher and lower ranks were of ſo long duration, and were carried on with ſuch inflexible perſeverance on both ſides; without coming to any deciſive point of ſuperiority on either, for ſeveral ages. In the earlier times, the nobility maintained their ground ſo firmly, that no acts of the commons were valid, till they had obtained the confirmation of the ſenate. Afterwards, however, as we have juſt now ſeen, the tables were effectually turned [33]. And yet, notwithſtanding the advantages thus gained by the commonalty, they were far from annihilating the power of the ſenate; on the contrary, they left it a ſpecial juriſdic-

ſhare of power which belonged to the people, ſays, Ου μην αλλα καιλαλειπιλαι μερις και τω δημω, και καιλαλειπιλαι γε βαρυταλη. And, after a detail of their various prerogatives, he concludes, Ὡςε παλιν εκ τουτων εικοως αν τινα ειπειν ὁτι μεγιςην ὁ δημος εχει μερίδα, και δημοκραιικον εςι το πολιτευμα. Polyb. 6. 12.

[32] Grav. O. J. 1. 28, & 104. Hopp. & Vinn. in I. 1. 2. 4.

[33] Ὁ, τι δε ταις πλειοσι δοξειε φρατραις, τουτο επι την βουλην ανεφερετο. εχ' ἡμων δε μετακειται το ἐθος. ου γαρ ἡ βυλη διαγινωσκει τα ψηφισθεντα ὑπο του δημου, των δ' ὑπο της βυλης γνωσθεντων ὁ δημος εςι κυριος. Dion. Hal. 2. 14.

Ἡ γε μην συγκλητος —— εν τοις κοινοις πραγμασιν αναγκαζειαι προσεχειν τοις πολλοις, και τοχαζεσθαι του δημου· —ὁμοιως δε και περι των εις ταυτην αγκοιλων. εαν γαρ τις εισφερη νομον —παντων ὁ δημος γινεται των τοιουτων και θεινα, και μη, κυριος. —διο παντων των προειρημενων χαριν δεδιε τους πολλους, και προσεχει τον νουν τω δημω ἡ συγκλητος. Polyb. 6. 14.

tion,

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tion, in ſeveral very important matters, even to the excluſion of their own authority. This, indeed, was a natural effect of the gradual increaſe of the people; who became too multitudinous, to be conveniently aſſembled upon every trifling occaſion. They were, therefore, under a kind of neceſſity of intruſting ſeveral branches of the adminiſtration to the ſenate, to which was likewiſe annexed a privilege of legiſlation; partial and ſubordinate, it muſt be confeſſed, but ample and extenſive enough to inſure it a conſiderable ſhare, both of reſpect and conſequence.

A "ſenatus-conſultum," therefore, is that which the ſenate ordains and conſtitutes[34]. An act of this kind did not indeed paſs into a general law; but, in compliment to the venerable body from whom it proceeded, was allowed to continue in force for one whole year[35], but not longer, unleſs ratified by the common courſe of "rogatio ad populum[36]." To prevent it, likewiſe, from being ſuppreſſed or altered by the conſuls, a law was made in very early times, that it ſhould be tranſmitted to the ædiles, and preſerved in the temple of Ceres. A. U. C. 304.

As the popular cauſe gained ground, the tribunes aſſumed a right of putting a negative upon any decree of the ſenate, at their own pleaſure[37]. If, therefore, any one of theſe officers interpoſed, even againſt the conſent of the reſt of his brethren, it was then called no more than "ſenatus-auctoritas," and had not the force of law, till it had been referred to the people, who reſerved to themſelves the liberty of judging of the propriety of this interceſſion. If found to be made upon unjuſt or frivolous pretences, they might ſet it aſide, and even inflict a puniſhment upon the tribune himſelf[38]; but

[34] "Quod ſenatus jubet atque conſtituit." I. 1. 2. 5. D. 1. 2. 2. 9. & Muel. ib.

[35] Ουδε ειναι νομους εις αει κυριους α ψηφιζεται το συνεδριον, αλλα πολιτευματα καιρον παυσιον ισχυν. Dion. Hal. 9. 37.

[36] Cic. pro Cluen. 49.

[37] εξι δε τω κωλυοντε εν τοις δημαρχοις το κρατος. ουδεν γαρ οι πολλοι κελευουσιν παρανευσαι τους συναμφω. Plut. in Tib. Graccho, p. 368.

[38] Grav. O. J. 1. 23.

but

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but if it paſſed without any oppoſition, it was then, and then only, "ſenatus-conſultum."

Notwithſtanding theſe reſtraints, however, the ſenate ſtill enjoyed ſeveral very high and tranſcendent prerogatives; among the reſt, that of diſpenſing with laws by their own decrees; and thoſe, too often, made in a clandeſtine manner, in preſence of a few members packed for the occaſion. A power, at all times ſo dangerous to a free conſtitution, and ſo frequently applied to many very ſcandalous purpoſes, eſpecially in the later and more corrupt times of the republic, loudly called for correction. Caius Cornelius, therefore, an intrepid and honeſt tribune, made an attempt to reduce it to its firſt principle, by veſting it in the body of the people at large, from whom all laws originally proceeded. But, though this deſign was hindered from taking effect in its full extent, by the intrigues of the ſenate, and the iniquity of the times; yet he prevailed ſo far, as to procure a law, forbidding the ſenate the exerciſe of their diſpenſing power, unleſs two hundred ſenators were preſent [39].

A. U. C. 690.

This ſpirited exertion of tribunitian courage was ſome check to the inſolence of the ariſtocracy for a ſeaſon; but, after the reign of Tiberius, when many of the Cæſars had degenerated into complete tyrants, and had deſtroyed the antient conſtitution, without troubling themſelves to form a new one, the ſenators, either by permiſſion or connivance, aſſumed the power of enacting laws, by the ſole virtue of their own authority [40]. But this abuſe does not relate to the times, to which our preſent obſervations are confined. During *this* period, ſays Gravina, "Juris diviſio commode duci poteſt a ſe-"natu, plebe, et populo [41]."

[39] Aſcon. in Frag. Cic. Orat. 1. pro Præcog. Jur. c. 1. § 23, 24. 29. Corn. Hooke's Rom. Hiſt. 8. 9.

[40] Vinn. & Hopp. in I. 1. 2. 5. Hopp.

[41] O. J. 1. 28.

Great

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Great care ſhould be taken, to obſerve this diſtinction between the ſeveral conſtituent parts of the Roman ſtate, and the legiſlative rights peculiar to each, according to the ſpecific deſcription given by Juſtinian [43]. "*Plebs* a *Populo*, eo differt, quo ſpecies a genere. "Nam appellatione *Populi* univerſi cives ſignificantur, connumeratis "etiam patriciis et ſenatoribus. *Plebis* autem appellatione, ſine "patriciis et ſenatoribus, cæteri cives ſignificantur." This diſtinction likewiſe leads us to another equally material, the conſequence of the former, between "leges, plebiſcita," and "ſenatus-con-"ſulta;" which muſt always be mentioned in the original Latin names; there being no ſingle words in our language, that correſpond, with ſufficient exactneſs, to the Roman ideas of them. For though all their diſtinct relatives ſubſiſt in the Engliſh conſtitution, with ſome obvious variations; yet the *Orders* of the Houſes of Lords and Commons, are no more than a kind of bye-laws, affecting only the members, and tranſactions, of that houſe, in which they were made; but the legiſlative power reſides, ſolely, in the collective body of the ſeveral conſtituent eſtates of the realm; and no laws are binding upon the whole nation, but thoſe of the firſt ſort, or "leges," properly ſo called.

A careful review of ſome of the preceeding chapters, will enable us to form a more exact judgment of the boaſted perfection of the Roman government.

Great and proſperous as it actually became in the courſe of time, it owed very little of that grandeur to any regular chain of political reaſonings, or to the prophetic deductions of deep-ſighted philoſophy; but rather, to a diligent and unremitting attention to the various incidents, that occaſionally offered themſelves, in the ſeveral ſtruggles and difficulties, in which this active people were ſo frequently involved. By taking a proper advantage of theſe, as they

[43] I. 1. 2. 4.

happened,

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happened, and by always chuſing the moſt promiſing and beneficial, they arrived, ſays Polybius, at the very ſame end that Lycurgus attained, and formed the moſt beautiful ſyſtem of government then exiſting [44].

In contemplating, therefore, its rapid increaſe; its unexampled ſucceſs; the profound awe and veneration which it impreſſed upon the whole antient world; we may be tempted to believe, that the various parts of it were ſo ingeniouſly contrived, and the reſpective powers of each order ſo equally poiſed, as to ſecure to it an uninterrupted ſtate of union and ſtability; and, from hence, to acceed to the opinion of the ſame writer, that "it was not poſſible for human wiſdom to invent a more perfect ſcheme of civil policy [45].

It is to be feared, however, that this eminent author was too much dazzled by the luſtre of the period in which he wrote; and that he gave a higher coloring to his picture, than could be well juſtified from a view of the original. By the final ſubjection of her moſt potent and formidable rival, the republic was then advanced to the brighteſt æra of her glory; when ſhe might, indeed, beſt deſerve ſo flattering a compliment, at the leaſt expence of ſincerity and truth. But, with all his knowledge of Roman affairs [46], the fidelity of the hiſtorian ſeems to have yielded too much to the partiality of the panegyriſt, in favor of that ſtate, which had atchieved ſuch wonders, by the hand, eſpecially, of his pupil, friend, and patron.

In the cooler moments of his reflexion, he well knew, that the moſt valuable productions, both of the political and phyſical world,

[44] Ρωμαιοι δε το μεν τελος τ' αυτο πεποιηνται της εν τη πατριδι καταστασεως, ου μην δια λογου, δια δε πολλων αγωνων και πραγματων, εξ αυτης αει της εν ταις περιπετειαις επιγνωσεως αιρουμενοι το βελτιον, ετως ηλθον επι τ' αυτο μεν Λυκυργω τελος, καλλιστον δε συστημα των καθ' ημας πολιτειων. Polyb. 6. 9.

[45] Ὡστε μη οιον τ' ειναι ταυτης ευρειν αμεινω πολιτειας συστασιν. Polyb. 6. 16.

[46] Livy bears this teſtimony to his character, "Polybium ſecuti ſumus, non incertum "auctorem, *quum omnium Romanarum rerum*, "tum præcipue in Græcia geſtarum." Liv. 33. 10.

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carried within themſelves their own congenial defects [47]; inſomuch, that, though they might chance to eſcape external injuries, they were liable to be corroded and deſtroyed by certain internal principles of corruption, implanted in their vitals by the hand of Nature. Such was the contexture of the Roman conſtitution, which, even in the ſummit of its felicity, was plentifully ſtored with the ſeeds of its own diſſolution [48]. The ſame powers, that, by an amicable co-operation with each other, cemented its various parts in one firm bond of union and friendſhip, by any wilful abuſe or miſapplication, became, with the ſame facility, the cauſes of the moſt ruinous diſcord [49].

The time was not very far diſtant, when the pride of victory, and the deceitfulneſs of proſperity, were to extinguiſh that patient bravery, that unaffected purity of manners, which had hitherto directed her feet in the paths of true glory. The meek ſpirit of obedience, which is the ſoul of political order, was now to give way to a turbulent impatience of legal reſtraint, and to an overweening conceit of ſelf-conſequence; when every pert demagogue was to think himſelf at liberty to diſturb the decorum of popular aſſemblies, by his ſeditious declamations; as if effrontery of face, and volubility of tongue, were the only neceſſary accompliſhments of an orator and a ſtateſman.

When, therefore, we conſider this celebrated conſtitution, with all theſe precarious and uncertain effects; there will be no injuſtice in ſaying, that, in almoſt every period of its exiſtence, it was more excellent in its parts, than in the whole. Though the materials of

[47] Συμφυη κακα—καθα φυσιν μεταβολαι, οικεια και φυσει παρεπομενη κακια.—Together with many other ſimilar expreſſions. Ib. paſſim.

[48] Καθαπερ γαρ σιδηρω μεν ιος, ξυλοις δε θριπες και τερηδονες συμφυεις εισι λυμαι, δι' ων κ' αν πασας τας εξωθεν διαφυγωσι βλαβας, υπ' αυτων φθειρονται των συγγενομενων· τον αυτον τροπον και των πολιτειων συγγενεσι καθα φυσιν ικανη και παρεπεται τις κακια. Polyb. 6. 8.

[49] Τοιαυτης δ' ουσης της ικανης των μερων δυναμεως, ης το και βλαπτειν και συνεργειν αλληλοις· προς πασας συμβαινει τας περιστασεις δυνασθαι την αρμονιαν αυτων. Polyb. 6. 16.

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which it was compoſed were good in their kind, yet they wanted the hand of one able architect, to give them that uniformity and harmony, which are eſſential both to the ſtrength and beauty of the edifice. The numerous conſtituents of this vaſt and complex body were generally much too independent of each other: they too often neglected, or even purpoſely avoided, that mutual communication of ſentiments, which the nature of legiſlation always requires; conſequently, the laws made by each reſpectively, bore too partial a relation to the intereſt of their own order, to be of any extenſive uſe to the whole community. This was particularly the caſe in the more unſettled and diſtracted times of the republic; when laws were frequently paſſed, even as it were in ſpite; and were dictated by a jealouſy of each other's ſuperiority, rather than by a diſintereſted zeal for the common cauſe of ſocial tranquillity. Thus, the balance of orderly policy could never ſettle into its due equilibrium; but was kept in a continued ſtate of oſcillation between both extremes, till it finally preponderated in favor of one great leviathan of power, who became, of himſelf, more than equal to all the reſt together; a fatal conſequence, that will ever reſult from popular liberty, when more eagerly coveted, than well underſtood; and more tumultuouſly aſſerted, than temperately enjoyed.

Under the preſent view, therefore, of the legal polity of this illuſtrious ſtate, it may be well compared to a plentiful magazine of heterogeneous merchandizes, which, when thrown together in one undiſtinguiſhed maſs, diſguſts the eye with its confuſed and ſhapeleſs appearance; but, when the ſeveral parts are judiciouſly ſelected, and diffuſed through their regular channels, makes glad the heart of man, and enriches the univerſe with the abundance of its treaſures.

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CHAP. VI.

" Jus Honorarium,"—derived from the Edicts of the Magiſtrates.—Prætors.—Ædiles.—Cenſors.—Dictators.—Extinction of the Republican Government.

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OUR laſt attempt was, to conſider the three great conſtitutional ſources of the written laws, ſo long as the republican government preſerved its vigor. But, as the aid of magiſtrates was likewiſe neceſſary, to give them activity, and apply them to the particular purpoſes for which they were made, this occaſionally introduced another ſpecies of laws, of inferior authority, indeed, with reſpect to the enacting power, though indulged with all the effects of law, in conſideration of their utility.

" Jus Honorarium."

This branch of Roman juriſprudence is well known under the name of " Jus Honorarium;" becauſe founded upon the edicts of the Prætors, and other principal magiſtrates, " qui honores " gerunt[1]." Under the regal government, juriſdiction of every kind, criminal as well as civil, was in the hands of the king, from whom it was transferred, in the ſame ſtate, to the conſuls. But the Valerian law, firſt propoſed by Poplicola, and renewed, in future times, by ſeveral others of the ſame patriotic family[2], ſoon ſtripped them of the former part, and left them only the right of judging in civil cauſes. The plebeians, however, having obtained a ſhare in the conſular dignity, the patricians, by the advice of Camillus, created a new magiſtrate, to whom they gave the name of Prætor; and confined his province wholly to the courts of civil judicature[3].

A. U. C. 387. Prætor.

[1] I. 1. 2. 7. D. 1. 2. 2. 10. 2. 2. 16.
[2] Roſ. Ant. Rom. 8. 2. Muel. in D. 1. [3] D. 1. 2. 2. 27.

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This title was derived "a præeundo," and, in its general ſenſe, was equally applicable to the conſuls [4], and every other officer who was inveſted with any ſupreme command [5], military as well as civil [6]; though it was more uſually underſtood of this great *judicial* magiſtrate. The pretence for this appointment was, that the conſuls were too much engaged in other affairs, both foreign and domeſtic, to attend to the private diſputes of individuals.

"Præfectus Urbi."

Avocations of this kind were indeed ſo frequent and unavoidable in a ſtate, whoſe attention was wholly turned to military enterprizes, that, from the earlieſt period of the conſtitution, it was found neceſſary to create a particular officer, called "Præfectus Urbi," whoſe duty it was to adminiſter juſtice in the abſence of the king, or other chief magiſtrate [7]. This appointment was firſt made by Romulus himſelf [8]; continued by all his royal ſucceſſors, and ſo on by the conſuls, till the eſtabliſhment of the prætorian office. After this, it was ſuperſeded and laid aſide; except only when the conſuls left the city to celebrate the "Feriæ Latinæ," on which occaſion a "Præfectus Urbi" was appointed, not ſo much for a judicial, as a religious, purpoſe; and in this ſtate it continued till the time of Auguſtus [9]; who, by the advice of Mæcenas, made it an ordinary and perpetual office, and gave the præfect joint power with the other magiſtrates, more particularly to hear appeals, and to preſide in capital cauſes [10].

[4] Liv. 6. 42. & 7. 1.
[5] Nov. 25. pr.
[6] "Forte ſub hoc tempus caſtellum evertere *Prætor*
"Neſcio quid cupiens."
Hor. Epiſt. 2. 2. 34.
[7] D. 1. 2. 2. 33. & Muel. ib.
[8] Tacit. 6. 10. & 11. Roſ. Ant. Rom. 7. 15.
[9] Suet. in Aug. 37. Dio Caſſ. 52. 323. Roſ. Ant. Rom. 7. 14.
[10] "Omnia omnino crimina præfectura "urbis ſibi vindicavit; nec tantum ea, quæ "intra urbem admittuntur, verum ea quoque "quæ extra urbem, intra Italiam." D. 1. 12. pr. & per tot.

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Fair and plauſible as the reaſons certainly were for the creation of the prætor, the real deſign of the patricians was to check the growing power of the commons, and to ſecure ſo important a branch of the ſovereignty to themſelves. The plebeians, jealous of every monopoly of honor, would not ſuffer it to be long engroſſed in the hands of the nobility; but, about thirty years after its firſt inſtitution, opened their own way to the prætorian, as well as conſular, chair, by the advancement of Quintus Publilius Philo, a plebeian of exemplary merit [11]. A. U. C. 416.

Originally, no more than one prætor was appointed. But, as the ſplendor and reputation of this illuſtrious city daily drew to it a vaſt conflux of ſtrangers, the judicial buſineſs increaſed, beyond the power of a ſingle magiſtrate to diſpatch. This demanded, therefore, the creation of a ſecond, to preſide over the cauſes of foreigners [12]; from whence he was called "Prætor Peregrinus," to diſtinguiſh him from the former, who, from the particular objects of his magiſtracy, was ſtyled "Urbanus [13]." When the empire received a further augmentation from the conquered provinces, each of theſe was allowed its provincial judge, with ſimilar title and power [14]. A. U. C. 508.

Another century introduced a new refinement upon this inſtitution. As the objects of judicature, both criminal and civil, multiplied apace, and a great variety of new cauſes aroſe, very diſtinct in their nature from each other; for the more eaſy and expeditious adminiſtration of juſtice, it was found neceſſary to throw them into diſtinct claſſes, called "Quæſtiones;" and to aſſign particular juriſdictions, and judges, to each, who were intitled Prætors and Quæſitors [15]. Theſe were obliged to exerciſe their reſpective A. U. C. 604. Quæſitors.

[11] Liv. 8. 15.
[12] D. 1. 2. 2. 28.
[13] Grav. O. J. 1. 35.
[14] D. 1. 2. 2. 32. Grav. O. J. 1. 36. & 37. Roſ. Ant. Rom. 7. 43.
[15] Roſ. Ant. Rom. 9. 18.

The nature and extent of theſe juriſdictions belong to the hiſtory of the Roman judicature; a very curious and intereſting ſubject, which will require a particular and minute diſcuſſion, and may poſſibly appear, at ſome future time, in a diſtinct treatiſe.

juriſ-

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jurisdictions within the city, for the space of one year; after which, they were dismissed into their several provinces, under the character of Proprætors. These great officers, of whatever rank or denomination, were first elected by the people, in the "comitia centuriata;" but the right of assigning them to their particular provinces, belonged to the senate.

Proprætors.

Prætorian Edicts.

The prætorian edicts, which constitute that branch of the old civil law, now under consideration, were certain rules or forms, published by every prætor at the entrance upon his office, on the calends of January, signifying the method whereby he proposed to administer justice during that year[16]. These were hung up in the public court in a white table[17], for the inspection of suitors and practitioners; but the authority of them lasted no longer than the office itself, unless they received a fresh ratification from the successor; and, in that case, they were called "Edicta Translatitia[18]."

The prætor had no power to abrogate or alter the laws, but only to temper them with equity; to apply them to the particular cases before him, according to his own ideas of justice; and to supply whatever was wanting, to give them their full and proper effect[19]. His edicts, therefore, were considered only as the voice of the law[20], but not law in its most comprehensive meaning, unless they happened to be adopted and continued by succeeding magistrates; under which qualified character only, they are considered by Justinian himself[21]. But, notwithstanding their inferiority of rank in the scale of legisla-

[16] Masc. de Sect. Sab. & Proc. 7.

To these Cicero alludes, "Cum magistratum inieris, et in concionem ascenderis, "est tibi edicendum quæ sis observaturus in "jure dicendo." De Fin. 2. 22.

[17] "Album Prætoris."

[18] "Sed in re tam usitatâ," says Cicero, "satis est ostendere omnes antea ita jus dixisse, et hoc, vetus edictum, translatitium-"que esse." In Verr. 1. 44.

[19] "Jus prætorium est, quod prætores introduxerunt, vel supplendi, vel corrigendi "juris civilis gratia." D. 1. 1. 7. 1.

[20] "Nam et ipsum Jus Honorarium viva "vox est juris civilis." D. 1. 1. 8.

[21] "Non modicam obtinent juris auctoritatem." I. 1. 2. 7.

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tion, they were yet held in the higheſt eſteem by ſome of the greateſt princes and ſtateſmen in after-times, and by none more than himſelf; as appears from his inſerting ſo large a number of them in the Digeſt.

In proceſs of time, indeed, as the age grew more corrupt, and as theſe judges were more intent upon their own private views and emoluments, than upon a punctual and faithful adminiſtration of juſtice, they were very apt to vary even from their own edicts, when it happened to ſuit the convenience and intereſt of their friends or themſelves. This opened a door to many ſhameful acts of injuſtice, and once more called forth that truly patriotic tribune, Caius Cornelius, under whoſe influence a law was enacted, to oblige the prætors to adhere to certain eſtabliſhed rules; and not to depart from thoſe which they themſelves had laid down, at the entrance upon their reſpective magiſtracies [22]. An effectual ſtop being now put to this dangerous ſpecies of corruption, from henceforward the prætorian edicts acquired uniformity and conſiſtency; they obtained an honorable place in the general ſyſtem of juriſprudence, and were thought worthy of being ſtudied, and illuſtrated with comments, by ſome of the ableſt profeſſors of the law in the time of Cicero [23].

[22] "Aliam deinde legem Cornelius, etſi "nemo repugnare auſus eſt, multis tamen "invitis tulit, ut prætores ex edictis ſuis "perpetuis jus dicerent. Quæ res tum grā"tiam ambitioſis prætoribus, qui varie jus "dicere aſſueverant, ſuſtulit." Aſc. Pæd. in Fragm. Cic. Orat. I. pro Corn.

In the following paſſage of the Greek hiſtorian, the cauſes of this law are ſet forth in a more particular manner: Και ὁυτως ἐκεινον τι διενομοθετησε, και ἑτερον τοιονδε· οι ῥαθυμοι φαντες τα δικαια καθ' ἁ δικασειν ἐμελλον αυτοις, συγγραφοντις ἐξιλιθισαι. ου γαρ πω παντα τα δικαιωματα, ἁ περι τα συμβολαια διιστακλο, ἐποιουν· ουτε ισαπαξ τουτ' ἐποιουν, ουτε τα γραφεντα ἐτηρουν· ἀλλα πολλακις αυτα μιλογραφουν, και συχνα ἐν τουτῳ προς χαριν ἡ και κατ' ἐχθραν τινων, ἀσπερ εικος, ἐγινετο. ἐσπουδαλο (sc. Cornelius), κατ' ἀρχας τε ιυδυς αυλους τα διαπια, ὁις χρησονται, προλεγειν, και μηδεν απ' αυτων παραβαινειν. Dio Caſſ. 36. 23.

Some writers (Roſ. Ant. Rom. 8. 5.) aſcribe this law to L. Cornelius Sylla the dictator, but certainly without foundation.

[23] Hopp. Vinn. et Hein. in I. 1. 2. 7. Grav. O. J. 1. 35—37. Hopp. prælog. Jur. 1. 25.—18. Tayl. tit. Prætor.

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Though the "jus honorarium" was principally founded upon the prætorian edicts, it was not confined to thoſe only; as many other magiſtrates of inferior rank had their juriſdictions, limited to the nature and deſign of their reſpective inſtitutions. The chief of theſe were the Ædiles, at firſt not more than two in number, elected out of the commons only, and called therefore, "Ædiles Plebis[24]". Their original duty was to aſſiſt the tribunes in the execution of their office; to take cognizance of ſuch cauſes as were particularly referred to their judgment; and to ſuperintend the ſacred edifices, the public places, and the markets.

Plebeian Ædiles. A. U. C. 260.

Towards the cloſe of the following century, when the commons had carried their favorite point, of having a conſul elected out of their own body, the ſenate decreed public games, in honor of the reconciliation which had taken place upon that occaſion. But, as the ædiles refuſed to bear any part in the conduct of the ceremony, ſeveral of the patrician youth voluntarily offered their ſervices, in honor of the gods. Upon this, two more ædiles were created out of the noble families, and were dignified with ivory chairs; from whence they were called "Ædiles Curules[25]." Their buſineſs was to direct the public games; to inſpect the repairs and ornaments of the temples, theatres, and all other places of entertainment; and in

A. U. C. 387.

Curule Ædiles.

[24] Dion. Hal. 6. 90. "Itemque ut eſſent "qui ædibus præeſſent, in quibus omnia ſcita "ſua plebs deferebat; duos ex plebe conſti- "tuerunt: qui etiam *ædiles* appellati ſunt." D. 1. 2. 2. 21. & Muel. ib. Roſ. Ant. Rom. 7. 24. Grav. O. J. 1. 39.

[25] "Ita ab diuturna ira tandem in concordi- "am redactis ordinibus, quum dignam eam "rem ſenatus cenſeret eſſe, meritoque id, ſi "quando unquam alias, *Deum immortalium* "*cauſa libenter facturos fore ut Ludi Maximi* "fierent, *et dies unus ad triduum adjiceretur*; "recuſantibus id munus ædilibus plebis, con- "clamatum a patriciis eſt juvenibus, *ſe id* "*honoris, Deum immortalium cauſa libenter* "*acturos, ut ædiles fierent.* Quibus quum "ab univerſis gratiæ actæ eſſent, factum S. "C. *ut duos viros ædiles ex patribus Dictator* "*populum rogaret.*" Liv. 6. 42. & 7. 1. "Tunc ut aliquo pluris patres haberent, "placuit duos ex numero patrum conſtitui, "ita facti ſunt Ædiles Curules." D. 1. 2. 2. 26. & Muel. ib.

concurrence

concurrence with the Plebeian Ædiles, they were general maſters and conſervators of the police [26]. In the later times of the republic, Julius Cæſar added two more, out of the patricians likewiſe, whoſe only duty was, to take care that the city was properly ſupplied with corn, and to regulate all matters that concerned the ſale of it; on which account they were diſtinguiſhed by the title of "Ædiles Cereales [27]." Theſe officers, having all their reſpective courts, had a conſequent right of making decrees, relative to thoſe matters which were the proper objects of their juriſdictions [28]; many of which ſtill appear in the Digeſt, and make a conſiderable and uſeful part of that collection [29].

A. U. C. 709.

The Cenſors, likewiſe, of whoſe inſtitution we have already ſpoken [30], had an authority, in many inſtances concurrent with, if not paramount to, that of the Ædiles; particularly, over the temples, ſtreets, aqueducts, and other public edifices [31]. By virtue of this they frequently uſed to iſſue their writs, or orders, for their ſeveral repairs; which precepts are known in the antient writers by the name of "Leges Cenſoriæ," and ſeem to ſtand upon much the ſame footing with the Ædilitian Laws [32].

Cenſors.

It would be ſuperfluous to enter into a minute detail of the other inferior offices of this great and complicated republic, ſuch an undertaking rather belonging to the province of the antiquary. It is ſufficient, therefore, to obſerve at preſent, that every juriſdiction was attended with the privilege of making rules for the due regu-

[26] Cic. de LL. 3. 3. Roſ. Ant. Rom. 7. 25. Grav. O. J. 1. 39.

[27] Roſ. & Grav. ut ſup. D. 1. 2. 2. 32. & Muel. ib.

[28] "Proponebant et Ædiles Curules edictum de quibuſdam cauſis, quod et ipſum "Juris Honorarii portio eſt." I. 1. 2. 7. & Vinn. ib.

[29] D. 21. 1.

[30] P. 30.

[31] Cic. de LL. 3. 3. Muel. in D. 1. 2. 2. 30.

[32] Tayl. p. 182. & 216.

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pation of itſelf: all which, in their ſeveral degrees, conſtituted part of the "Jus Honorarium," under the general reſtrictions above-mentioned.

Dictator.

But beſide theſe eſtabliſhed magiſtrates, whoſe powers were circumſcribed within certain known limits, another uſed ſometimes to be introduced, out of the regular and ordinary courſe of the conſtitution; who, for the ſhort time of his continuance, ſuperſeded, if not annihilated, every other power whatſoever. This was the Dictator [33]. The ſudden appearance of ſo great a potentate, in the midſt of a land of liberty, is not eaſily reconcileable, at firſt ſight, with the inveterate prejudices of mankind in general againſt arbitrary power: and yet it is a certain truth, that, by the unanimous ſenſe of the whole nation, no other adequate and effectual remedy could ever be diſcovered, againſt the frequent, and otherwiſe incurable, diſtempers of a diſtracted and tumultuous government [34]. For this we need only appeal to the moſt authentic hiſtories of thoſe ages, in which it will be ſeen, that, for ſeveral ſucceeding centuries, the ſtruggles between the Romans and their foreign enemies for dominion, and between the different orders among themſelves for ſuperiority, were ſo violent and indeciſive, that nothing leſs than an abſolute power could repel the attacks of the common enemy, or aſſuage the civil commotions within the boſom of the ſtate itſelf.

When the ſalutary effects of this ſhort and tranſitory deſpotiſm were fully known, by repeated experience, there is no wonder that it ſhould be ſo often revived, in caſes of extremity. But that a people,

[33] Dion. Hal. 5. 70. ad fin. Liv. 2. 18. D. 1. 2. 2. 18. & Muel. ib. Roſ. Ant. Rom. 7. 17.

[34] To this we have the teſtimony of the great and judicious antiquary (Dion. Hal. 5. 77.), who, in his elegant and accurate account of the firſt inſtitution of the dictatorial office, and of the good effects ariſing from the proper exerciſe of it, obſerves: Ὡσθ' ἁπασι παραγιναι την αυτην δοξαν, ὡς μια βουθυια σωτηρ ειη συαντων καιρων, και τελευταια σωτηριας ελπις, ὁταν απογιγνωται ἁπασαι δια καιρους τινας, ἡ του δικαιστερου αρχου.

glowing

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glowing with the flame of liberty, and exaſperated againſt a haughty and tyrannical nobility, by many recent inſtances of the moſt provoking cruelty, ſhould ever have ſubmitted, at firſt, to ſo dangerous an innovation, is a paradox, that can only be explained by the natural weakneſs, caprice, and inſtability of popular government; and by its utter inability of ſupplying a remedy, from itſelf, againſt thoſe morbid and cankerous humors, which daily engender within its own bowels.

Ten years had ſcarcely elapſed, ſince the whole Roman nation had riſen, as one man, againſt the odious family of the Tarquins, and, together with the tyrant, had baniſhed even the very name of his office: and yet, at the very inſtant when the ſame deteſted exiles were making a violent effort to recover their loſt dignity, at the head of a moſt formidable confederacy of all the Italian ſtates, threatening the total deſtruction of their infant republic, the ſelf-ſame people fled, at once, for refuge to the arms of a new and untried power, much more abſolute than any that had been ever known to their conſtitution from its very foundation.

The plebeians, juſtly irritated by the ſeverity of their creditors, were, at that inſtant, in a ſtate of open rebellion, and poſitively refuſed to enliſt, or to give the leaſt aſſiſtance againſt the enemy, then at their gates. The Valerian law, ſo lately paſſed, whereby a right of appeal in criminal caſes was veſted in the body of the people, had entirely deprived the conſuls of their original coercive power; ſo that they could neither ſuppreſs the tumult, nor puniſh the ſeditious. With a view, therefore, of putting a ſpeedy ſtop to this ruinous invaſion, the ſenate thought it a more eligible expedient to ſubmit to a tyranny of their own creation [35], than to ſee the city itſelf, perhaps, totally deſtroyed, by the obſtinacy and diſobedience of its inferior A. U. C. 255.

[35] Theſe were ſome of the cauſes, as the hiſtorian very elegantly remarks: Τα αναγκαζοντα αὐτὸν, επι τὴν καταλυσιν τοῦ τυραννικοῦ πολιτευματος αιδαιρετον ὑπομειναι τυραννιδα. Dion. Hal. 5. 70.

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members, and by the fatal delays ariſing from their civil diſſentions.

A decree was accordingly paſſed[36], to oblige the conſuls, and all other magiſtrates whatſoever, to lay down their offices; and that ſome ſingle perſon, to be choſen by the ſenate, and approved by the people, ſhould be inveſted with the ſole ſovereign authority, for a ſpace of time not exceeding ſix months, and with greater power (but without ſpecifying in what degree) than the conſuls. It ſhould be remembered, that the tribunes were not then in being; but, after their inſtitution, that was the only office of the ſtate not affected by the dictatorſhip, till the time of Sylla, who effectually humbled their inſolence, by depriving them of many of their fundamental privileges; and more eſpecially, by a decree, which prohibited all ſuch as had been tribunes, from being advanced to any higher dignity[37]. This diſcouraged all the patrician families from coveting that popular office for the future; and was ſome ſecurity to the ariſtocratical faction, againſt thoſe formidable attacks, which perſons of noble birth, and ſuperior talents, were more capable of making upon it.

Whether the ſenate really underſtood the nature and extent of that power which they meant to confer, may be a matter of ſome doubt. They might, perhaps, as far as appears to the contrary, have maturely conſidered every conſequence of this ſingular ſtretch of policy. In thoſe obſcure days of poverty and content, the dreams of conqueſt and dominion had not yet diſturbed the repoſe of this

[36] Δαρχιαν και Κλοιλιαν τους τοτι υπατευοντας αποδισθαι την ιξουσιαν, και ει τις αλλος αρχην τινα ειχεν, η πραγματων κοινων επιμελειαν· ινα δι ανδρα, ὁν αν ἡ βουλη προιληται, και ὁ δημος επιψηφισηται, την απαντων ιξουσιαν παραλαβοντα, αρχειν μη πλειονα χρονον ἑξαμηνου, κρειτονα ιξουσιαν ἑχοντα των υπατων. Dion. Hal. 5. 70.

[37] Τοι δι των δημαρχων αρχην ισα και απιλιν, ασθινεστατην αποφηνας, και νομῳ κωλυσας μηδεμιαν αλλην των δημαρχον αρχην επι αρχειν. διο και παιδες η δοξης η γενους αλιπουμενοι την αρχην εις το μελλον ἑξιτρεπονλο. Appian. de Bell. Civ. p. 413. edit. Hen. Steph. 1592.

infant and feeble republic; neither had the diſintereſted love of their country as yet received the taint of wealth and ambition. Abſolute power, therefore, ſurrounded only with toil and danger, could have no other charms to render it an object of deſire in their eyes, but the ſole proſpect of its becoming the inſtrument of reſtoring peace and order to a diſtracted government. This heroic purity of ſentiment, which was the peculiar character of that plain and virtuous age, ſeemed to juſtify an implicit confidence in the honor and integrity of the worthy perſon, whom they meant to raiſe to that important, but perilous, dignity; and might reaſonably induce them to conclude, that he would be as readily diſpoſed to reſign it again, as they were to force it upon him, as ſoon as ever the end of his appointment was anſwered: they probably, therefore, ſaw no hazard at all in the experiment. But the caſe of the people was totally different. They fell in with the views of the ſenate, without heſitation or inquiry; and ſubmitted, quite contentedly, to their new ſovereign, whoſe political life, they underſtood, was limited to ſo very ſhort a ſpace, and the extent of whoſe power, though acknowledged to be great, remained yet wholly undefined [38].

In conſequence of this decree of the ſenate, Titus Lartius, one of the conſuls, was named the firſt dictator. There was full ſcope left him to aſſume what power he pleaſed, and he became, at one inſtant, an abſolute monarch [39]. The Valerian law being now ſuſpended, he was made the ſole arbiter of life and death, of war and peace; and, in ſhort, was himſelf the conſtitution, without being liable to be cenſured, or called to account, after the expiration of his office, for any thing he had done in it [40].

The

[38] Τουτο αγνοησαντες ὁν ειχει δυναμιν οι δημοτικοι, ψηφιζονται κυρια ειναι τα δοξαντα τῃ βουλῃ, ην δι αρα κρινθεν αρχῃ της κατα νομους τυραννιδος· την τε αἱρισιν του μελλοντος αρχειν, τους εκ του συνεδριου συνεχωρησαν αυτοις εφ' ἑαυτων βουλευομενοις ποιεισθαι. Dion. Hal. 5. 70.

[39] Ουτος πρωτος εν Ρωμῃ μοναρχος αποδειχθη, πολεμου τε και ειρηνης, και παντος αλλου πραγματος αυτοκρατωρ. Dion. 5. 73.

[40] Εκριναν (sc. ἡ βουλη) την μεν ὑπατειαν εξουσιαν αυτιλειν κατα το παρον, ἑτεραν δε τινα αρχην αποδειξαι, πολεμου τε και ειρηνης και παντος αλλου πραγματος

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The appointment fortunately anſwered the moſt ſanguine expectations of its authors. The ſedition was appeaſed, the enemy diſperſed, and Lartius, returning from his expedition, voluntarily reſigned his office before the time legally fixed for its expiration; inſtantly reſtoring every part of the government to its former ſtate; with the ſingular ſatisfaction, of having brought about theſe happy events, without the death, exile, or ſevere puniſhment, of a ſingle Roman citizen [40].

This flattering example made ſuch a laſting impreſſion upon all his ſucceſſors in the ſame high office, that though the various exigencies of the ſtate required a frequent ſuſpenſion of the ordinary courſe of adminiſtration, ſo that there were more than fourſcore appointments [41] of the ſame kind, for various purpoſes, during the three centuries immediately following [42], yet there is not a ſingle inſtance of the leaſt abuſe of power recorded of any one of them [43]. On the contrary, they all made a conſcience of exerciſing it with the greateſt mildneſs and moderation; waiting for no other reward, beſide the ſatisfaction ariſing from a faithful diſcharge of their duty, and the honor of being thought worthy of devoting their lives and beſt ſervices to the welfare of their country: the ſtrongeſt proof that can poſſibly be given of the real exiſtence of that diſintereſted heroic virtue, for which the Romans were ſo juſtly celebrated in more antient times; and which, from the height whereto it was carried, has been often thought problematical and imaginary.

πραγματος κυριαν, αυτοκρατορα και ανυπευθυνον ων εν βουλαις και πραξι. (Dion. Hal. 5. 70.) And further, Την ισοτυραννον (αρχην) εκρινεν επι τα πραγματα παραγαγειν, ἡ παντας εμελλεν ἑξειν ὑφ' ἑαυτη τους νομους. Ib. § 73.

[41] Ουτε αποκλισιας ουδενα Ρωμαιων, ουτε εξιλασας της πατριδος, ουτε αλλην συμφορα βαρεια περιβαλων ουδεμια. Ib. § 70.

[42] See the Capitoline marbles, as printed in Hooke's Roman Hiſtory, and in various publications, both Latin and Engliſh.

[43] Viz. ab A. U. C. 255 ad 551.

[44] Ὁστις ὁ ζηλος, απ' εκεινου του καιρου αρξαμενος, απασι παρεμεινε τοις λαμβανουσι την αυτην εξουσιαν, αχρι της τριτης προ ἡμων γενεας. Ουδενα γουν εκ της ἱστοριας παρειληφαμεν, ὁς ου μετριως αυτῃ και πολιτικως εχρησατο, πολλαπις απαγαγοντος της πολεως καταλυσαι τας νομιμους αρχας, και παντα ποιησαι τα πραγματα ὑφ' ἑαυτον. Dion. Hal. Ib. § 77.

Beſide

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Beſide the nomination of a dictator, which was the moſt uſual reſource in caſes of difficulty, it was not uncommon, when any violent ſedition aroſe, or any dangerous conſpiracy was apprehended, for the ſenate to make a decree, "Ut videant conſules, ne quid "reſpublica detrimenti capiat";" by which the conſuls, and likewiſe other chief magiſtrates, as the prætors and tribunes, were immediately empowered to ſeize and puniſh any ſuſpicious and guilty perſons, by virtue of their own authority, notwithſtanding the Valerian law. Of this we find frequent mention in the [45] writers of thoſe times, particularly in relation to the Catilinarian conſpiracy, in which Cicero ſo much diſtinguiſhed himſelf by his vigilance and activity.

From theſe, and ſeveral other inſtances, we may learn, that the *Valerian law* was a kind of palladium of Roman, as the *habeas corpus* act is of Engliſh, liberty; and they ſeem both to have a ſimilar uſe, that is, to ſecure the perſon of the ſubject from unjuſt and cauſeleſs impriſonment; and, therefore, though ſome very critical juncture may warrant a temporary ſuſpenſion; yet the wanton exerciſe of this ſuſpending power may be attended with the moſt fatal conſequences, both to public and private freedom.

From the uniform policy of the Roman people upon theſe trying occaſions, for a long ſeries of years, we deduce likewiſe a clear and convincing argument of the natural imperfection and debility of democratical government, which the ignorance and prejudices of vulgar minds have, by a ſtrange abuſe of words, in a peculiar manner, called *free*; a title to which, of all others, it has the leaſt pretenſions. When a ſtate is unable to protect the rights and liberties of her ſubjects by principles of her *own*; or to find a cure for the many occaſional diſorders that diſturb her tranquillity, out of her

[45] Liv. 3. 4.
"Quæ forma," ſays the author, "ſe-"natus-conſulti ultimæ ſemper neceſſitatis "habita eſt."

[46] Sall. in Bell. Cat. Cic. Orat. paſſim. Cæſ. de Bell. Civ. 1. 5.

own

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own internal reſources; when ſhe is obliged, in every caſe of danger and extremity, to implore the aid of ſome unappellable, tranſcendent power, to diſpel the ſtorm, then louring over her head; and with a peremptory "Quos ego"—to allay the tempeſt of popular diſcord; when, I ſay, we ſee her reduced to this mortifying dilemma, by what conſtruction of language can that conſtitution be called *free*?

Let not this ſhort reflexion upon a too popular error be charged with the ſlighteſt tendency towards the oppoſite extreme; or with the remoteſt deſire to ſoften the terrific viſage of arbitrary power; a power, which every one of true feeling will ever hold in the utmoſt deteſtation, as dangerous and fatal, in the higheſt degree, to the deareſt intereſts of humanity. But the moſt momentous concerns of this world are governed by contradictions; and the rankeſt poiſons, when judiciouſly applied, are often the moſt ſovereign reſtoratives of a diſeaſed habit. While, therefore, the real friend of true political liberty looks with pity upon any conſtitution, ſo naturally infirm, as to require the frequent repetition of ſo violent a medicine; he cannot help congratulating that people, who, at the inſtant they were obliged to have recourſe to the remedy, were ſure of finding ſufficient virtue and moderation in thoſe whom they called upon to adminiſter it, to correct its malignant, and make the beſt uſe of its healing, qualities.

The ſame inſtrument may too eaſily be employed to oppoſite purpoſes; and the uſe to which it is applied, is that chiefly which makes it either beneficial or pernicious[47]. For the firſt three centuries after its inſtitution, the dictatorſhip was the ſanctuary of the the whole people. At the cloſe of that period, when the good for-

[47] Καλα μιν γαρ απαντα και συμφεροντα φαινεται τοις χρωμενοις, οταν τις αυτοις χρησηται καλως· αισχρα δι και ασυμφορα, οταν πονηρους λαβη προστατας. τουτου δ' ὴ φυσις αιτια, πρισθουσα τοις αγαθοις απασι και κηρας συμφυτους. Dion. Hal. 5. 77.

tune

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tune of this brave and flouriſhing commonwealth had ſecured to her a deciſive ſuperiority over the reſt of her neighbours; when the ferment of popular jealouſy had ſubſided, and each order of the ſtate had learned to move within its own proper ſphere; this great office, being then no longer neceſſary, ſunk into diſuſe for an hundred and twenty years[48]. Happy, had it ſo continued! But when the people once became intoxicated with glory, wealth, and proſperity, and began to loath the ſweets of orderly government, then was it inſtantly converted into the moſt intolerable tyranny[49].

By a law paſſed in the general aſſembly of the people themſelves, at the inſtance of the "Inter-rex," Valerius Flaccus, the famous Cornelius Sylla was, by a moſt unprecedented compliment, created dictator for a time unlimited; all his former acts, however irregular and unconſtitutional, were ratified; and a full power was given him over the lives and fortunes of his fellow-ſubjects[50]; a power

A. U. C. 671.

[48] Ab A. U. C. 551 ad 671, *i. e.* from the cloſe of the ſecond Punic war, when, according to the hiſtorian, "Diſcordiarum et "certaminis utrinque finis fuit, ſecundum "bellum Punicum," (Sall. Hiſt. Fragm. 1.) to the time of Sylla; who Δικτατωρα μεν ἑαυτον ἀπηγορευσε, δ' ἐτων ἑκατον εἰκοσι τουτο το γενος της ἀρχης ἀναλαβων. Plut. in Sylla, p. 91. "Dictator creatus (ſc. Sylla) (cujus honoris uſurpatio per annos centum viginti intermiſſa. "Nam proximus poſt annum, quam Hannibal Italia exceſſerat: ut appareat populum Romanum uſum dictatoris non "tam deſideraſſe, quam timuiſſe poteſtatem "imperii, quo priores ad vindicandam "maximis periculis rempublicam uſi fue"rant) immodicæ crudelitatis licentia uſus "eſt." Vell. Pat. 2. 28.

[49] Ὡτι τοτε πρωτον αισθεσθαι Ρωμαιους, ὁ τον ἀλλον ἁπαντα χρονον ἡγουν, ὁτι τυραννις εστιν ἡ δικτατωρος ἀρχη. And a little lower, after an account of the tyranny of Sylla, he adds, διὰ ταυτα ἐμισηθη, και δεινον ἐφανη το του δικτατωρος ὀνομα. Dion. Hal. 5. 77.

[50] Ἐψηφισθη δε αυτῳ παντων ἀδεια των γεγονοτων. προς δε το μελλον, ἐξουσια θανατου, δημευσεως, κληρουχιων, κτισεως, φορᾶσεως, ἀφελεσθαι βασιλειαν, ᾧ βουλοιτο χαρισασθαι. Plut. in Sylla, p. 91. Of this we find Cicero complaining, in ſeveral parts of his works. Having given many inſtances of unjuſt laws, he adds, "Nihilo, credo magis illa (ſc. juſta), quam "interrex noſter tulit, ut dictator, quem "vellet civium, indicta cauſa, impune poſſet "occidere." (De LL. 1. 15.) And in another place, "Omnium legum iniquiſſi"mam, diſſimulamque legis, eſſe arbitror "eam, quam Lucius Flaccus, interrex, de "Sylla tulit, ut omnia, quæcunque ille "feciſſet eſſe rata. Nam cum cæteris in "civitatibus,

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power which he exerciſed with the ſeverity of a tyrant, and abdicated with the ſerenity of a philoſopher [51]. But it was too late, by this act of affected moderation, to prevent the fatal contagion of his former example. He left far too many faithful imitators of his violence and uſurpations, but not a ſingle one of his voluntary humiliation. A ſelf-denying ordinance was not likely to gain much ground, in thoſe ages of corruption, voluptuouſneſs, and iniquity. The people themſelves, indeed, were grown weary of a conſtitution, under which, with the form and ſemblance of freedom, they ſuffered every evil both of anarchy and deſpotiſm. They thought one tyrant more tolerable than a thouſand; and, therefore, were eaſily drawn in to aid the ambitious views of thoſe aſpiring potentates, who ſucceſſively graſped at the ſupreme command; and inſenſibly co-operated with them in forging thoſe chains, which were to hold both themſelves and their poſterity in everlaſting bondage [52].

May this melancholy and affecting example humble the inſolence of republican licentiouſneſs! May it point out to all factious op-

" civitatibus, tyrannis inſtitutis, leges omnes extinguantur atque tollantur, hic reipublicæ tyrannum lege conſtituit. Eſt invidioſa lex, ut dixi: veruntamen habet excuſationem. Non enim videtur hominis lex eſſe, ſed temporis." Pro Leg. Agr. 3. 2.

Another hiſtorian, ſpeaking of the ſame law, obſerves, Ρωμαιοι δ' ουχ' ικοντες μεν, ουδ' καλα νομιζοντι χειροτονησε ουδεν, ουδ' επι σφισιν ηγουμενοι το εργον ολως, ει δε τη φαντων απορια την υποκρισιν της χειροτονιας, ως ελευθεριας εικονα και προσχημα, ασπασαμενοι, χειροτονουσι τον Συλλαν ες ισον διλουσι τυραννοι αυτοκρατορα. τυραννος μεν γαρ ἡ των δικτατωρων αρχη και παλαι ολιγῳ χρονῳ ἀριζομενη, τοτε δε πρωτον ες ἀριστον ελθουσα, τυραννις γιγνεται εντελης—ουτω μεν δη Ρωμαιοι, βασιλευσιν ουκετι τας ἑκατον ολυμπιαδας χρησαμενοι, επι δ' εκεινοις δημοκρατιᾳ τε και ὑπαιοις ετησιοις προσταταις ες αλλας ἑκατον ολυμπιαδας, αυθις επειρωντο βασιλειας. Appian, p. 412.

[51] Appian, p. 415. Plut. in Sylla, p. 91. 93.

[52] Salluſt has painted this univerſal degeneracy in moſt beautiful and warm coloring, where, ſpeaking of the prevailing avarice and venality of the ſame ages, he adds, " Ita paullatim populus, qui dominus erat, " et cunctis gentibus imperitabat, dilapſus " eſt, et pro communi imperio, privatim " ſibi quiſque ſervitutem peperit. Hæc " igitur multitudo, primum malis moribus " imbuta, deinde in artes, vitaſque varias " diſpalata, nullo modo inter ſe congruens, " parum mihi quidem idonea videtur ad " capeſſendam rempublicam." Ad Cæſ. de rep. ord. Ep. 1. vulgò 2.

poſers

pofers of lawful authority, the very thin partitions which divide the extremes of liberty from the extremes of tyranny; and convince them, that without the reſtraint, no leſs than the protection, of regular government, men would daily worry and devour each other, like the ſavage beaſts of the deſart! May it diſpoſe them to look up with reverence, duty, and gratitude, to that conſtitution of which they are members; a conſtitution that is the pride of civil policy; and under whoſe wiſe and benign auſpices, they muſt be their own greateſt enemies, if they do not enjoy every bleſſing that man can reaſonably expect, in the compound and imperfect ſtate of human ſociety.

THE HISTORY OF THE LEGAL POLITY of the ROMAN STATE; AND OF THE RISE, PROGRESS, and EXTENT OF THE ROMAN LAWS.

BOOK III.

The Imperial Government, ſo long as the Seat of Empire continued at Rome.

CHAP. I.

An Inquiry into the Cauſes of this great Revolution.—Origin and Progreſs of the Agrarian Laws.—Decline of the Democracy.—Increaſe of the Ariſtocracy.

BOOK III. CHAP. I. Third Period.

THE third period of the legal and political hiſtory of Rome opened with a melancholy ſcene of confuſion and diſmay. The features of the ancient commonwealth were cruelly diſfigured; though

[1] The Author, deſirous of ſetting the nature of that government which ſucceeded the republic, together with the cauſes that led thereto, in the cleareſt light in his power; ſenſible

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though it is difficult to ſay, what new form it then aſſumed; or indeed, whether the authors of theſe important changes had any particular form in contemplation at all. Thus much only is certain, that it went on from one ſtage of corruption to another; retaining ſeveral properties of every ſpecies of its former conſtitution, without the perfections of any one: but the moſt predominant ingredients were military, the ſure conſequences of which were miſrule and violence. In fact, as the diſorders of the ſtate, and the irregularities of adminiſtration, daily multiplied, the army became, in the end, the ſole paramount power over the whole empire. The emperors were more abject ſlaves of the ſoldiery, than the people of the emperors; and ſome, even of the beſt-deſerving of theſe princes, were ſuddenly elevated to the throne, and again, as ſuddenly, depoſed and maſſacred, at the momentary caprice of the lawleſs and turbulent Prætorian cohorts.

Cauſes leading to theſe revolutions.

A ſurpriſing combination of events, in the higheſt degree flattering to the hopes of an aſpiring people, preceeded theſe fatal revolutions; and, from the moſt exalted eminence of earthly felicity, plunged them into the abyſs of irretrievable perdition.

So long as the dread of their potent rivals kept them upon their guard, and confined their views within the natural limits of the Italian continent, they trod with patience in the ſteps of their plain and honeſt anceſtors [a]. Proud of their hereditary poverty, they were rich only

ſenſible likewiſe both of the variety and oppoſition of ſentiment, which have hitherto prevailed upon this ſubject, has carefully examined the moſt approved records of antiquity; endeavouring, throughout, to ſupport his own obſervations by the ſanction of ſome writer of credit and veracity. This, he hopes, will bring the ſeveral facts referred to more immediately within the view of his learned readers; and be received as a ſufficient apology, for having multiplied his quotations, ſo much beyond the proportion obſerved in the preceeding books.

[a] "Cujus ætatis," ſays the hiſtorian, ſpeaking of the character of the middle ages of the republic, "ſuperiores centum anni, "ſancti, pii, et, ut diximus, aurei, ſine fla"gitio, ſine ſcelere; dum ſincera adhuc et "innoxia paſtoriæ illius ſectæ integritas, "dumque Pœnorum hoſtium imminens me"tus diſciplinam veterem continebat." Flor. 3. 12.

in affection towards their country. Their emulation was not vainly diſplayed in ſplendor and magnificence, but in the nobler exertions of valour and public ſpirit [3].—But the virtue of Rome was buried in the wreck of Carthage.—When the vaſt influx of foreign wealth, and the fallacious charms of conqueſt, had once vitiated her mind, her primitive integrity and moderation, the ſureſt pledges of her political happineſs, were abandoned to the moſt inſatiable avarice, and the moſt boundleſs ambition [4].

Thus were the ſeeds of her trouble and decay ſown at the ſame inſtant with thoſe of her glory and proſperity [5]. The ſame hands, which aſſiſted in extending her dominions, made them too bulky for the narrow genius of democracy to ſuperintend and govern. The haughty victors, who had bound the monarchs of the Eaſt in chains, and had dictated conditions of obedience to the abject ſucceſſors of Xerxes and Alexander, ſcorned to condeſcend to the ſame level with the vulgar herd, in the tribes and centuries; or to receive laws from an illiterate multitude of ruſtics and mechanics.

[3] To the truth of this account, another elegant and well-informed writer bears the following teſtimony: "In duas partes ego "civitatem diviſam arbitror, ſicut a ma- "joribus accepi, in patres et plebem. "Antea in patribus ſumma auctoritas "erat, vis multo maxuma in plebe. Ita- "que ſæpius in civitate ſeceſſio fuit, ſem- "perque nobilitatis opes diminutæ ſunt, "et jus populi amplificatum. Sed plebs "eo libere agitabat, quia nullius potentia "ſuper leges erat; neque divitiis aut ſu- "perbia, ſed bona fama, factiſque for- "tibus nobilis ignobilem anteibat: hu- "millimus quiſque in armis aut militia, "nullius honeſtæ rei egens, ſatis ſibi, ſa- "tiſque patriæ erat." Sall. ad Cæſ. de rep. ord. Ep. 1.

[4] "Illæ opes atque divitiæ afflixere ſeculi "mores: merſamque vitiis ſuis, quaſi ſen- "tina, rempublicam peſſumdedere." Flor. 3. 12.

[5] "Quæ enim res alia furores civiles pe- "perit, quam nimia felicitas?" Flor. 3. 12. And again, "Jam pæne toto orbe "pacato, majus erat imperium Romanum, "quam ut ullis externis viribus extingui "poſſet. Itaque invidens fortuna principi "gentium populo, ipſum illum in exitium "ſuum armavit." And a little further, "Cauſa tantæ calamitatis eadem quem om- "nium, nimia felicitas." Flor. 4. 2.

While

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While an over-bearing and tyrannical nobility perſevered in deſtroying thoſe principles of mutual confidence, which had heretofore been the life of their general union, and the ſteady guide, both to high and low, in the purſuit of one common intereſt; the people, loſt to all ſenſe of decent ſubordination, and well-tempered liberty, became inſolent to thoſe whom they deſpiſed; ſervile, to thoſe they feared; and inconſtant, even where they profeſſed the warmeſt attachments. Driven about by every wind of ſedition, they ſubmitted to be the tools of thoſe crafty ſeducers of their allegiance, and corrupters of their morals, a Cinna, Clodius, or Catiline; an infamous crew of profligate impoſtors, who turned patriotiſm into party; who aſſiduouſly cheriſhed the flames of diſcord in the heart of the conſtitution; and exulted, with malicious joy, in the deſolation themſelves had cauſed.

Theſe evils were heightened yet more by the perpetual dictators, and the two triumvirates, who ſprang from the fermented humors of this diſtempered government; who diſdained to obey thoſe laws which they had the power to control; and made juſtice and policy the mere ſport of faction and ſelf-intereſt. Not content with having obliged the moſt powerful nations of the known world to do homage to the Roman eagle, each, for himſelf, coveted the ſupreme rule at home; and, by their irreconcilable animoſities, made the ſtreets of Rome to flow with the blood of her moſt virtuous citizens[6].

Theſe were ſome of the baleful effects of a too rapid current of ſucceſs, that ſoon inſpired the paſſion of univerſal empire; a paſſion no leſs fatal to the peace of thoſe breaſts that harboured it, than of

[6] "Poſteri centum anni, quos a Carthaginis, Corinthi, Numantiæque excidiis, et Attali regis hereditate deduximus in Cæſarem et Pompeium, ſecutumque hos, de quo dicemus, Auguſtum, ut claritate rerum bellicarum magnifici, ita domeſticis cladibus miſeri et erubeſcendi." Flor. 3. 12.

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the world, of which it was the object. An exemption from tribute, which the Romans enjoyed for more than a century [7], could not fail to impreſs upon their minds very fallacious ideas of the conſequences of victory. Every new conqueſt ſerved only to ſharpen an appetite, which even the treaſures of Aſia, poured into the boſom of Rome, were unable to ſatisfy. Wealth, thus ſuddenly acquired, corrupted more than it enriched. By adminiſtering to the great the materials of luxury and effeminacy, it debauched every true principle of virtue and honor; and by tempting the neceſſities of the poor with the hopes of a ſpeedier ſupply, withdrew them from the painful track of induſtry and œconomy, and rendered them idle, profligate, and venal.

The public good was now ſacrificed, with great indifference, to the private views of the powerful; though the conteſt was not, who ſhould govern, but who ſhould plunder, the conquered provinces. Thus was the ſtate daily exhauſted, not indeed of its money, for in that it too much abounded; but of a treaſure infinitely more precious, its native inhabitants; who eagerly followed the military train of every greedy conſul or prætor; while the cultivation of their lands was given up to ſlaves and foreigners, who felt no joy in their fertility; who reaped no profit from their improvement; but, grown weary of their chains, while their cruel maſters were gathering laurels in the wild regions of adventure, made the neglected capital tremble for its own exiſtence. Happier, therefore, would it have been for this active people, to have confined their ambition

[7] i. e. From A. U. C. 586, when Paulus Æmilius brought into the public treaſury the ſpoils of Macedon, to the conſulſhip of Hirtius and Panſa, A. U. C. 710. "Omni "Macedonum gaza, quæ fuit maxima, "potitus eſt Paulus: tantum in ærariam pe- "cuniæ invexit, ut unius imperatoris præda "finem attulerit tributorum." Cic. de Off. 2. 22. Τοις δε Μακεδοσι φερειν τα λοιπα δημοσιευθεν προσεγραψεν χαριν υπερ των πολλων, ως τουτων εις το δημοσιον τοσι χρηματων υπ' αυτα τιθεντων, ωστε μηκετι δεισθαι του δημου εισφερειν, αχρι των Ιρτιου και Πανσα χρονων. Plut. in P. Æmil. p. 190.

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to the bounds which Nature had ſet them; than, by comprehending ſuch diſtant and extenſive countries within the circle of their dominion, to have been enfeebled and conſumed by their own ſtrength [8].

Origin and progreſs of the Agrarian Laws.

Of the numerous ſubjects of contention, which now began to interrupt the public harmony, none were more frequently renewed, nor more ſerious in their conſequences, than ſuch as concerned the diviſion of landed property. It is hoped, therefore, that a more particular inveſtigation of the progreſs of theſe memorable diſputes will not be deemed an object altogether unworthy the curioſity of the reader.

As the Romans gradually extended their victorious arms over the weaker ſtates of Italy, they were accuſtomed to take a certain portion of the conquered lands into their own poſſeſſion; part of which was ſold by auction, for the uſe of the public; and the reſt divided among the poorer citizens, on the payment of a ſmall quit-rent to the treaſury, in acknowledgment of the tenure [9].

Caſſian Law. A. U. C. 266.

For the better regulation of theſe diſtributions, various laws had been paſſed from time to time, under the title of *Agrarian*. The firſt of theſe was the *Caſſian Law*; enacted not many years after the beginning of the conſular government [10]; which was followed, at different periods, by many others of the ſame import [11]; though

[8] "Quippe ſicut Galliam, Thraciam, "Ciliciam, Cappadociam, uberrimas valli-"diſſimaſque provincias, Armenios etiam, "et Britannos, ut non in uſum, ita ad "imperii ſpeciem magna nomina acquiſiiſſe, "pulchrum atque decorum: ita eodem "tempore dimicaſſe domi cum civibus, ſo-"ciis, mancipiis, gladiatoribus, totoque in-"ter ſe ſenatu, turpe atque miſerandum. "Ac neſcio an ſatius fuerit populo Ro-"mano, Sicilia et Africa contento fuiſſe, "aut his etiam ipſis carere, dominanti in "Italia ſua, quam eo magnitudinis creſcere, "ut viribus ſuis conficeretur." Flor. 3. 12.

[9] Ῥωμαῖοι τῆς τῶν ἀτυγχάνοντων χώρας ὅσην ἐπιτιμοῦντο πολέμῳ, τὴν μὲν ἐπιπρασκον, τὴν δὲ ποιοῦμενοι δημοσίαν, ἐδίδοσαν τιμᾶσθαι τοῖς βουλομένοις καὶ ἀπόροις τῶν πολλῶν, ἀποφορὰς ὑ πολλὰς εἰς τὸ δημόσιον τελοῦσιν. Plut. in Tib. Grac. p. 365. Ap. de Bell. Civ. p. 353.

[10] Liv. 2. 41.

[11] A liſt of the chief of theſe is given by Roſ. Ant. Rom. 8. 10.

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the introduction of them was commonly attended with riot and diſcontent".

The comforts ariſing from the enjoyment of ſeparate property are more apt to ſtimulate, than to ſatisfy, the appetite; and though a ſimplicity of manners, and a happy ignorance of the ſuperfluities of life, may, for a while, reſtrain the importunities of the human paſſions, they will naturally riſe in their demands, with the abilities of the ſtate to indulge them. Cato the Cenſor, therefore, of honeſt and frugal memory, clearly foreſeeing that Rome was haſtening to corruption through her own greatneſs, vigorouſly oppoſed the increaſing luxury of the age, both by his example and authority. For this he was rewarded with a ſtatue, by the ſuffrages of a grateful people [12]; and yet, by a ſtrange inconſiſtency, more common than accountable, in the contracted ſphere of worldly politics, he ſuffered his inveterate prejudices againſt an unfortunate rival, to counteract his own zeal, and effectually to defeat his favorite plan of reformation. The deſtruction of Carthage eaſed Rome of her fears; and thus the malady grew every day worſe, by the removal of the only check that could have prevented it.

The richer citizens getting poſſeſſion of large tracts of waſte land, and being confirmed in them by long preſcription; adding to theſe likewiſe, either by force or purchaſe, the ſmaller pittances of their poor neighbours, by degrees became maſters of territories inſtead of farms. As a further grievance, the management of theſe was often committed to the care of ſlaves; whereby the multiplication

[12] Thus ſays the hiſtorian, of the Caſſian law: "Tum primum *Lex Agraria* promulgata eſt; nunquam deinde, uſque ad hanc memoriam, ſine maximis motibus rerum agitata." Liv. 2. 41 & 42.

[13] The inſcription does the higheſt honor to his memory; and is thus recorded by the writer of his life: Ανδριαντα γαρ αναθεις (ſc. ὁ δημος) εν τω ναω της υγιειας, επιγραψαν υ τας τροπηγας, υδε του θριαμβου του Κατωνος, αλλ', ὁτι την Ρωμαιων πολιτειαν ηγωνισμενη και ζηπουσαν επι τα χειρω, τιμητης γενομενος, χρηταις αγωγαις και σωφρονι θεσμοις και διδασκαλιαις εις ορθον αυθις αποκατεστησε. Plut. in Cat. Maj. p. 352.

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of the free inhabitants was impeded; ſuch as remained were oppreſſed by penury, exactions, and military ſervices; or, if left unemployed, were enervated by idleneſs, without lands of their own to occupy; and excluded the privilege of earning their bread upon thoſe of others, by captives and foreigners [14].

Licinian Law. A. U. C. 377.

Such enormous monopolies once more raiſed the indignation of tribunitian patriotiſm, and gave birth to the famous *Licinian Law*, ſo denominated from its author, Licinius Stolo. By this it was ordained, that no citizen, of what ſtation ſoever, ſhould poſſeſs more than five hundred acres to his own ſhare; nor maintain more than one hundred head of large, and five hundred of ſmall, cattle; and that a certain number of free men ſhould be conſtantly employed in the buſineſs of huſbandry [15].

This law was admirably ſuited to the modeſt ideas of a republic; and well calculated to preſerve the juſt equipoiſe between the higher and lower orders of the community. While it ſupplied the nobles with ſufficient affluence to command all that reſpect which was due to their ſtation, it deprived them of the power of corrupting or depreſſing the poor: and while it ſupported that diſtinction of rank, which is eſſential to the dignity and good order of civil government, it prevented the common people from becoming a burden to the ſtate, by enabling them to maintain their families with their daily

[14] Οἱ πλουσιοι, τησδε της ασημαντου γης την πολλην κατιλαβοντες, και χρονῳ θαῤῥουντες υτινα σφας ουκ αφαιρεθησεσθαι, τα τε αγχου σφισιν οσα τε ην αλλα βραχια πωπηλων, τα μεν ανουμενοι πειθοι, τα δε βια λαμβανοντες, πεδια μακρα αντι χωριων εγεωργουν, ωνητοις ες αυλα γεωργοις και πωμεσι χρωμενοι.——Τους δ' Ιταλιωτας ολιγοτης και δυσανδρια κατιλαμβανει, πρυχομενους πωλια τε και ισφοραις και γρατειαις. ει δε και σχολασειαν απο τουτων, ουκ αργιας ἑστιθητο, τους γης υπο των πλουσιων εχομενης, και γεωργους χρωμενων θρεπτουσιν αντι ελευθερων. App. de Bell. Civ. 353.

[15] "Creati tribuni C. Licinius et L. "Sextius, promulgavere leges, omnes adverſus opes patriciorum, et pro commodis "plebis:—alteram de modo agrorum, ne "quis plus quingenta jugera agri poſſideret." Liv. 6. 35. Εκρινεν (ſc. δημαρχοι) μηδενα εχειν της γης πλεθρα πεντακοσια πλειονα, μηδε τροφατευειν εκατον πλειω τα μειζονα, και πεντακοσιων τα ελασσονα. και εις ταυτα ἑ αυτους αριθμον ελευθερων εχειν επιταξαι, οἱ τα γιγνομενα φυλαξειν τε και μηνυσειν εμελλον. App. de Bell. Civ. p. 354.

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labor. That no ſanction might be wanting to inſure the operation of a law of ſuch extenſive importance, it was guarded likewiſe by oaths, fines, and forfeiture [16].

CHAP. I.

It might well have been expected that theſe heavy penalties, enforced by ſuch ſolemn obligations, would have checked the growth of this crying evil, for ages to come. But the beſt-concerted deſigns of human wiſdom ſoon become impotent and inefficacious, when oppoſed by the cravings of avarice, the inſolence of power, and the audacity of ambition. No ſooner was the law paſſed, than it was broken by the author himſelf; who is the firſt upon record that became the object of its ſeverity [17].

This well-timed example, moſt probably, put a ſtop to any groſs and open violation of it for the preſent; though it was far from being a ſufficient barrier againſt the future courſe of the evil itſelf. The more cautious and circumſpect evaded the prohibitions, by making purchaſes under borrowed names; while others, more daring, ſet them at open defiance [18]. A law, deſigned to humble the pride of riches, and give countenance to parſimony, was ill-adapted to the aſpiring views of the conquerors of Carthage and Numantia. The antient abuſes gathered ſtrength from the ſucceſſes of the ſtate; and were daily renewed, with many aggravations,

[16] Οἱ μεν δη ταδε νομῳ περιλαβοντες, ὀμνυουσιν επι τῳ νομῳ, και ζημιας ὡρισαν, ἡγουμενοι την λοιπην γην αὐτικα γας φευξεσι κατ' ολιγον διαπεπρασθαι. App. de Bell. Civ. p. 354.

[17] "Eodem anno (396) C. Licinius "Stolo, a M. Popilio Lænate ſua lege "decem millibus æris eſt damnatus, quod "mille jugerum agri cum filio poſſideret, "emancipandoque filium, fraudem legi tu-"liſſet." Liv. 7. 16.

"Ipſe cum jugera quingenta haberet, "et altera emancipati filii nomine poſſide-"ret; in judicium vocatus, et primus om-"nium ſua lege punitus eſt." Sext. Aul. Vict. de vir. illuſt. c. 20.

[18] Φρονεις δ' ουδεμια ην ουδε των νομων ουτε των ὁρκων· αλλ' ὁπως και εδοκουν φρονησαι, την γην ες τους οικειους επι ὑποκρισει διενεμον, οι δε πολλοι τελεον παροφρονουν. App. de Bell. Civ. p. 354.

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threatening the utter ruin of the induſtrious huſbandman, and the extinction of popular liberty[19].

Tiberius Gracchus.

While avarice and rapine were thus ranging at free quarter over the patrimony of the poor, one ſtrenuous effort was made to repel their hoſtile invaſions, by the virtue and courage of the famous Tiberius Sempronius Gracchus; a youthful hero, adorned with every valuable accompliſhment of the genuine Roman. Melting with pity at the deſolate view of the Hetrurian plains, forſaken by their native inhabitants, and over-run by foreign ſlaves; animated likewiſe by the cries of the whole people, who importunately demanded the reſtitution of the alienated lands, he reſolutely ſtood forth the advocate of their deſerted cauſe[20].

A. U. C. 620.

Armed with the power of the tribunate, he meditated an excellent ſcheme of redreſs; and engaged ſeveral other eminent perſons, who had yet eſcaped the general contagion, to ſupport it with their united authority[21]. The candid and equitable principle upon

[19] The ſame abuſes which Appian had aſſigned as the cauſes of the *Licinian Law*, Plutarch has applied to theſe later times; both, probably, upon equally ſolid reaſons: Βραχυν μεν χρονον ισχυσε την πλεονεξιαν το γραμμα τουτο, και τοις πενησιν εβοηθησε, κατα χωραν μενουσιν επι των μεμισθωμενων, και νεμομενοις ην εκαστος εξ αρχης ειχε μοιραν. υστερον δε των γειτνιωντων πλουσιων υποβλητους προσωποις μεταφερομενων τας μισθωσεις εις εαυτους, τελος δε φανερως ηδη δι' εαυτων τα πλειστα κατεχοντων, εξωσθεντες οι πενητες, ουτε τοις γραπτοις επι προθυμως παρειχον εαυτους, ουτε παιδων ανατροφης, ως ταχυ την Ιταλιαν απασαν ολιγανδριας ελευθερων εσεσθαι, δισμυριων και βαρβαρικων εμπεπλησθαι, δι' ων εγεωργουν οι πλουσιοι τα χωρια, τους πολιτας εξελασαντες. Plut. in Tib. Grac. p. 365.

[20] Theſe circumſtances are related by Plutarch, upon the authority of the brother of Tiberius, and may therefore be relied upon, for truth. Ὁ δε αδελφος αυτου Γαϊος εν τινι βιβλιῳ γεγραφεν, ως Νομαδιαν πορευομενον δια της Τυρρηνιας τον Τιβεριον, και την ερημιαν της χωρας ὁρωντα, και τους γεωργους η νομαδας, οικετας επηλυδας και βαρβαρους, τοτε πρωτον επι νουν βαλεσθαι την μυριων κακων αρξασαν αυτοις πολιτειαν. την δε πλεῖστην αυτος ὁ δημος ὁρμην και φιλοτιμιαν εξηψε, προκαλουμενος δια γραμματων αυτον εν στοαις και τειχεσι και μνημασι γραφομενων, ανακαλειν τους πενητας την δημοσιαν χωραν. Plut. in Tib. Grac. p. 366.

[21] Ὁ Τιβεριος δε δημαρχος αποδειχθεις, ευθυς επ' αυτην ὡρμησε την πραξιν. Id. ib. And a little further: Ου μην αφ' αυτου γε συνηδει τον νομον, τοις δε πρωτευουσιν αριτη και δοξη των πολιτων συμβουλοις χρησαμενος. Id. ib.

which

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which this law was framed, is a convincing proof both of his wiſdom and moderation; for it may be truly affirmed, that a gentler remedy was never before applied to ſo deſperate a miſchief[22]. Free from the impolitic and malevolent deſire of reducing all orders to one common level, his only object was to preſerve the proper diſtinction between each; by bringing back the rich within the pale of thoſe laws which they had ſo ſhamefully tranſgreſſed; and by reſtoring the poor to thoſe rights of which they had been ſo unjuſtly deprived. To quiet the apprehenſions of the offenders, he remitted the fines inflicted by the Licinian law; and to alleviate their hardſhips, directed that the value of the lands to be reſigned ſhould be repaid out of the public treaſury[23]. As a further indulgence, he allowed the heir of the family to retain two hundred and fifty acres, over and above the eſtate poſſeſſed by his father[24].

The humble commonalty, amply ſatisfied with the propoſed reformations, would willingly have buried all former acts of injuſtice in total oblivion, on condition only of having their poſſeſſions ſecured from any future incroachments. But the opulent landholders, enraged at the law by the inſtigations of avarice, and at the author by reſentment and perverſeneſs, ſtrove to alarm the jealouſy of the people againſt Tiberius, by charging him with a deſign to introduce innovations, and excite commotions in the ſtate. The powers of eloquence, however, exerted in ſo juſt a cauſe, rendered him invincible[25]; and his adverſaries, confounded by the force of it, had

[22] Και δοκει νομος εις αδικιαν και πλεονεξιαν τοσαυτην μηδενοτι φραστερος γραφηναι και μαλακωτερος. Plut. in Tib. Grac. p. 367.

[23] Ους γαρ ιδιι δικην της απειθειας δουναι, και μετα ζημιας ην παρα τους νομους εκαρπωτο χωραν, αφειναι, τουτοις εκελευσε τιμην προσλαμβανοντας εκβαινειν ων αδικως εκεκτηντο, και παραδιδοσθαι τοις βουλομενοις των πολιτων. Id. ib.

[24] Απεκαμιξε τον νομον, μηδενα των πεντακοσιων πλεθρων πλεον εχειν. παισι δ' αυτων, υπερ του πατρικου νομου προσειναι τα ημισεα τουτων. Appian de Bell. Civ. p. 354. This clauſe is not mentioned by Plutarch.

[25] Αλλα παντες ουτω της επανορθωσεως ουσης ευγνωμονος, ο μεν δημος ηγαπα, παρεις τα γεγενημενα, παυσασθαι το λοιπον αδικουμενος· οι δε πλουσιοι και

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had recourſe to the common expedient of dividing the tribunitian authority againſt itſelf; by prevailing upon Octavius, another of the ſame body, to interpoſe his negative.

But this injudicious reſiſtance ſerved only to aggravate the evil, which it meant to remove. It inflamed the zeal of the intrepid Tiberius; provoked him to abandon the mild and humane deſign of his firſt law, and to bring in another, much more ſevere upon the engroſſers of lands; enjoining them to give up immediately whatever they poſſeſſed, contrary to the permiſſion of the laws then in being [26]. The diſſentions ſtill increaſing, he went further; ſuſpended the magiſtrates from the exerciſe of their reſpective juriſdictions, ſealed up the treaſury, and put an entire ſtop to the ordinary courſe of public buſineſs.

After various fruitleſs attempts to reconcile the contending parties, Tiberius, by his ſuperior influence over the people, depoſed Octavius from his office of tribune; and having thus violently overpowered all oppoſition, his law was confirmed by the voice of the "comitia," and himſelf appointed one of the commiſſioners to regulate the intended diſtribution. At the ſame time, to ſecure the affection of his fellow-citizens, he took advantage of a ſingular bequeſt, lately made by Attalus king of Pergamus, of his whole dominions and fortune to the Roman people; and propoſed, that the ready money, left by this infatuated prince, ſhould be divided among ſuch of the poor as had obtained a ſhare of the public lands, to enable them to improve their farms; and as to the cities and

και κλημαντικοι πολιτειξια μεν των νομοι, οργη δε και φιλοπικια τον ιομοθετην δι' εχθος εχαλιες επιχειρειν επιτριβειν τον δημον, ως γης αναδασμον επισυγχυσει της πολιτειας εισαγοντος τω Τιβερίω, και παντα πραγμαΐα κινουλος. αλλ' ουδεν επερανεν· ο γαρ Τιβέριος ωρος καιλην υπωδισιν και δικαιαν αγωνιζομενος λογην και φαυλοτερα κοσμησαι δυναμην πραγματα, θειος ην και αμαχος. Plut. in Tib. Grac. p. 367.

[26] Προς τουτο παρεξυνθεις ο Τιβερις, τον μεν φιλανθρωπον επανιλετο νομον· των δε ηδη τι τοις πολλοις και σφοδροτερον επι τας αδικιας εισφερει, ηδη κελευων εξιεσθαι της χωρας η εκκλησια παρα τους πρωτερους νομους. Plut. in Tib. Grac. p. 368.

territories,

territories, he denied the diſpoſal of them to the ſenate, inſiſting that the right belonged to the people in general, whoſe pleaſure he ſhould conſult upon that occaſion. CHAP. I.

To protect him againſt the malice of the exaſperated nobles, he was elected tribune for another year; and, ſtrengthened by this renewal of his authority, gave daily proofs of the ſincereſt attachment to the popular cauſe. But his enemies, watching his moſt innocent motions with an eye of prejudice, carried the folly of ſuſpicion to ſo great a length, as to interpret a ſudden elevation of his hand toward his head (deſigned by himſelf only as a ſignal of diſtreſs in the heat of a tumult), into the demand of a diadem [27]. What was ſuggeſtion only in the "forum," was truth in the ſenate. The members of that haughty body, trembling for their uſurped property, were clamorous with the conſul to avenge them of the tyrant. But that wiſe and juſt magiſtrate refuſing to paſs ſentence, before the guilt was proved, Scipio Naſica, whom fear and ſelf-intereſt alone had ſuddenly transformed into a champion of liberty, ruſhed out, at the head of a band of deſperate partizans, upon the defenceleſs tribune; and put him to a barbarous and ignominious death with a vile weapon [28], the uſe of which could only have been excuſed againſt a ſavage and noxious animal: and thus fell Tiberius

[27] Των δε απωτερω θαυμαζοντων τα γιγνομενα, και πυνθανομενων, ὁ Τιβεριος ἡψατο τῃ χειρι της κεφαλης, ενδεικνυμενος τῃ οψει τον κινδυνον, επει της φωνης ουκ ἠκουεν. οἱ δε εναντιοι τουτο ἰδοντες, εθεον προς την βουλην, απαγγελλοντες αυτοι διαδημα τον Τιβεριον· και τουτο σημειον ειναι το της κεφαλης επιθιγγανειν. Plut. in Tib. Grac. p. 377.

[28] Thus ſtands the remainder of this account in the original, which, as an inſtance of the violence and partiality of the ſenators, well deſerves the notice of the reader: Παυλις μεν ουν ἐδιωρθωθησαν· ὁ δε Νασικας ἐξω των ὑπαλων την στολην βοηθειν, και καταλυειν τον τυραννον. αποκριναμενου δε τουτου εκεινου, βιας μεν ὑδεμιας υπαρξειν, ὑδε αιρησειν ὑδενα των πολιτων ακριτον, ει μη τι ψηφισαιτο τι των παραλογων ὁ δημος ὑπο του Τιβεριου πεισθεις ἡ βιασθεις, τουτο κυριον μη φυλαξειν· αναπηδησας ὁ Νασικας, επει τοινυν, ἐφη, προδιδωσιν ὁ αρχων την πολιν, οἱ βουλομενοι τοις νομοις βοηθειν ακολουθειτε.—— συνεπομενου δε αυτου (sc. Τιβεριου) ὁ μεν ὑμφανους και στολος εις την κεφαλην παταξας σοδι ἀφρω, Ποπλιος ἡν Σατυρειος, εις των συναρχοντων. Id. p. 378.

S Gracchus,

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Gracchus, an illuſtrious victim to a rapacious and implacable ſenate.

It is for poſterity alone to do that juſtice to the memory of this accompliſhed patriot, which the envy and ſelfiſhneſs of his cotemporaries moſt ungratefully withheld. The ſenatorial faction, whoſe ſchemes of monopoly and oppreſſion were, for a while, rendered abortive by his zeal and activity, ſpared no pains to blaſt his reputation, and to ſtigmatize him for ever as a ſeditious diſturber of the repoſe of his country. In this light he is repreſented in many paſſages of the writings of Cicero, the ſtaunch and determined panegyriſt of the ariſtocratical party; while Naſica ſhines forth in the ſame, in all the ſplendid colors of heroiſm; though, in fact, the principal abettor of a cruel aſſaſſination, in order to ſecure himſelf againſt the penalties of thoſe laws which he had ſo groſsly violated. But an impartial reader will be always upon his guard againſt the ingenious ſophiſtry, and deceitful eloquence, of this captivating orator; who by the word, republic, only meant the ſenate and its friends; and by liberty, the right of the ariſtocracy to tyrannize at pleaſure over the common people.

In the earlier ſtages, indeed, of this diſpute, it ſhould be remembered, to the honor of both parties, that each behaved to the other with that reſpect and forbearance, which are the natural effects of a purity of manners, and an uncorrupt education [29]. But that a conteſt, ſo very intereſting in its conſequences, ſhould, in time, beget animoſity and violence, can never be any matter of wonder, while the calm empire of reaſon carries ſo weak an influence over the

[29] Ησαν γαρ ὁμως τι καθ' ἑκαστην ἡμεραν αγωνὶς αὐλῳ προς τον Οκταβιον επι τῳ βηματος· εν οἰς καιτοι εξ ακρας σπουδης και φιλοτιμιας αἱλοριεδοῦντες, ὑδεν ἑιπειν λεγονται περι αλληλων φλαυρον, υδε ῥημα προσωτισειν θατερῳ προς τον ἑτερον δι' οργην ανεπιτηδειον. ὁ γαρ μονον εν βακχευμασιν, ὡς ἑοικεν, αλλα και εν φιλοτιμιαις και οργαις το σωφρονειν καλων, και σωταιδιυσθαι σωφρονως, εφετον και κατακεσθαι την διανοιαν. Plut. in Tib. Grac. p. 368.

imperious

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imperious ſallies of the human paſſions. It muſt be confeſſed, therefore, that the diſcretion of Tiberius gave way, in the end, to his reſentment againſt the ſenate; and, in ſome of the later exertions of his legiſlative powers, tranſported him ſo far beyond the limits of moderation [30], as to create ſuſpicion and diſguſt in the minds even of his moſt ſteady adherents. The depoſition of Octavius was a high indignity upon the whole tribunitian college; and a bold attack upon that freedom of opinion, which is the unalienable right of every member of a free government, and the characteriſtical diſtinction of this popular office in particular, wherein each conſtituent was equal in power to all the reſt of his collegues [31].

Tiberius himſelf was fully ſenſible of the force of this truth; for, without it, even his own conduct would have been little leſs than conſpiracy and treaſon againſt the ſtate. Admitting, therefore, the principle, he found it expedient to apologize for this apparent exceſs of his duty [32]. "The tribunitian office," he acknowledged, "to be conſecrated to the ſervice of the people by its ori-" ginal inſtitution;" from whence he deduced this concluſion, "that, if the tribune ſhould become a renegade from the popular in-" tereſt, or ſhould exert that power to the injury of thoſe for " whoſe benefit it was granted, he in fact deprived himſelf; elſe " he might lay the Capitol in ruins, or ſet fire to the fleet, without

[30] —ωσθε τροπον τινα της βουλης την ισχυν κολυειν, αρης οργην και φιλονικιαν μαλλον, η τον του δικαιου και συμφεροντος λογισμον. Plut. in Tib. Grac. p. 375.

[31] "Ubi intercedentem legibus ſuis " Cnæum Octavium videt Gracchus, *contra* " *fas collegii, jus poteſtatis*, injecta manu, " depulit roſtris: adeoque præſenti metu " mortis exteruit, ut abdicare ſe magiſtratu " cogeretur." Flor. 3. 14.

[32] Αισθανομενος δε των πολιτευμαλων το περι τον Οκταβιον υ τοις δυνατοις μονον αλλα και τοις πολλοις ικπαθεστερον (μεγα γαρ τι και καλον εδοκει το των δημαρχων αξιωμα μεχρι της ημερας εκεινης διαττηρησαντων απηρσθαι και καθυβρισθαι) λογον εν τη δημη διεξηλθεν. Plut. in Tib. Grac. p. 374.

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"control or puniſhment[33]." This doctrine he endeavoured ſtill further to illuſtrate, by a reference to thoſe implied conditions, upon which the antient regal dignity itſelf was held; for "though "conferred upon the reigning prince, with the moſt ſolemn cere- "monies which the ſuperſtition of the age could invent, yet was it "for ever aboliſhed, for the miſconduct of a ſingle tyrant[34]."

This, it muſt be owned, was a very plauſible mode of reaſoning; and, if applied with judgment and preciſion, ſtrictly conſonant with the natural rights of mankind, and the moſt refined notions of political liberty. But whether the parallel was juſt, may be a queſtion of ſome difficulty. Certain it is, that the people, in the preſent caſe, conſidered it as a fallacy. The gaudy pageant of ſtate, called a King, was, in their eyes, an object only of terror and deteſtation; according to the prevailing prejudices of thoſe times, he paſſed almoſt for a monſter and a cannibal[35]; while the partial and uncontrollable power of the tribunes, was, to them, the only bulwark of public liberty. The ſtep now taken by Tiberius was perfectly new; and being contrary to every idea hitherto entertained of the privileges of this important office, was naturally productive of clamor and diſſatisfaction.

[33] Εφη γαρ ἱερον τον δημαρχον ειναι και ασυλον, ὁτι τῳ δημῳ καθωσιωται, και τω δημῳ προεστηκεν. αν ὁν μεταβαλλομενος τον δημον αδικῃ, και την ισχυν κωλυῃ, και παραιρηται την ψηφον, αυτος ἑαυτον απεστερηκε της τιμης, ἐφ' ὁις ελαβεν ὑ ποιων. ὁτι και το Καπιτωλιον κατασκαπτουσα, και το νεωριον εμπιπραῦσα δημαρχον ἑαν δησει, και ταυλα μεν ποιων, δημαρχος ἐστι πονηρος· ἑαν δι καταλυῃ τον δημον, ὑ δημαρχος ἐστι. Plut. in Tib. Grac. p. 374.

[34] Και μην ἡ γε βασιλεια, προς τῳ πασαν ἀρχην ἐχειν ἐν ἑαυτῃ συλλαβουσα, και ταις μεγισταις ἱερυργιαις καθωσιωται προς το θειον· αλλα Ταρκυνιον ἐξελαυνουσα ἡ πολις αδικουντα, και δι' ἑνος ανδρος ὑβριν ἡ πατριος ἀρχη και κλισασα την Ρωμην κατελυθη. Id. ib.

[35] When Eumenes, king of Pergamus, who had paid a viſit to Rome, where he was much careſſed by the ſenate, had been recommended to Cato the Cenſor, as a prince of an amiable diſpoſition, and a firm friend to the Roman people; Εγω, ειπεν, (ſc. Κατων) αλλα φυσει τυτο το ζωον, ὁ βασιλευς, σαρκοφαγον ἐστι. Plut. in Cat. Maj. p. 337.

But,

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But, upon the whole, whatever may be the ſenſe of its real propriety, it will always remain an inconteſtible proof of the precarious tenure of Roman liberty, even under that very office, which was expreſsly created for its protection: and is a ſtriking inſtance, among others, of thoſe political ſoleciſms, ſo congenial with republican governments. Though the power annexed to it was arbitrary, it was, at the ſame time, diviſible; conſequently, void of one eſſential quality, that gives a degree of conſiſtency even to deſpotiſm. Each member of this heterogeneous body was co-ordinate with, and independent of, all the reſt of his aſſociates, and carried the whole of the official authority in his own perſon. Unity of ſentiment, and harmony of operation, were therefore liable to daily interruption by internal oppoſition; which, in its lighteſt conſequences, ſuſpended all action, and much oftener threw the whole ſtate into confuſion. As the days of outrage advanced, this was really the caſe; the tribunitian houſe, daily divided againſt itſelf, became a nuiſance, not only to the patricians, but to its own conſtituents; till, in the end, it was almoſt annihilated by a bold ſtroke of dictatorial omnipotence; and revived, in after times, for the ſole purpoſes of ſedition and uſurpation.

The ſoul of the murdered Tiberius ſtill ſurvived in Caius Gracchus; who being inveſted with the office of tribune, enraged at his brother's murder, and inſpired by his laudable example[16], enacted ſeveral laws, with a view of promoting the popular intereſt, and of depreſſing the influence of the ſenate. Among theſe the Agrarian laws were not forgotten[17]; to which were added others, for the regulation of the army—of the market—to grant the Italians an equal right of ſuffrage with the citizens of Rome; and a very im-

[16] "Statim et mortis, et legum fratris ſui "vindex, non minore impetu incaluit "Caius Gracchus." Flor. 3. 15.

[17] App. de Bell. Civ. p. 36.

portant

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portant one, to transfer the judicial power from the ſenate to the equeſtrian order[38]. In all his orations in behalf of theſe laws, he conſtantly turned himſelf to the aſſembly inſtead of the ſenate; and ſeemed to pay ſuch a ſuperior deference to their authority, as if he expreſsly intended to exalt the power of the people above that of the fathers[39].

Thus ſupported by the affection of the public, Caius acquired a kind of monarchical ſway over the whole ſtate. Even the ſenate condeſcended to conſult him in caſes of difficulty; a compliment which he very punctually returned, by promoting, to the utmoſt, the honor of that venerable body[40]: and to ſhew himſelf worthy of this general confidence, he devoted his whole thoughts to the ſervice of the public; ſo that they who both feared and hated his power, were ſtricken with wonder at his application and perſeverance[41].

The ſenators, alarmed at his increaſing popularity, which they found impoſſible to ruin by direct oppoſition, artfully changed their

[38] Των δε νομων ὡς εισφερει τω δημω χαριζομενος, και καταλυων την συγκλητον, ὁ μεν η κληρυχικος, αμα πεμπων τους ψηφιουμενους την δημοσιαν· ὁ δε, γρατιωτικος, ισθητα τε κελευων δημοσια χορηγεισθαι, και μηδεν' εις τουτο της μισθοφορας ὑφαιρεισθαι των γρατευομενων, και πεντηρον ἑπτα ετων και δεκα μη καταλεγεσθαι γρατιωτην· ὁ δε, συμμαχικος, ισοψηφους ποιων τοις πολιταις τους Ιταλιωτας· ὁ δε, σιτικος, επιτιμωντων τοις ψηφιουμενοις την αγοραν· ὁ δε, δικαστικος. Plut. in C. Grac. p. 386. The biographer has affirmed, that Caius divided this power between the ſenators and equeſtrians, in which he is confuted by a learned modern critic; who has clearly ſhewn, from various authorities, that he transferred it abſolutely from one order to the other. Rualdi Animadv. 26. in loc. cit. The further diſcuſſion of this fact is reſerved for the hiſtory of the Roman judicature.

[39] Τουτοις τοις νομοις εισφερων, τα τε αλλα λογχαις σπουδασαι διαφερουσιν, και των προ αυτου παντων δημαγωγων προς την συγκλητον αφορωντων και τα καλλιστου κομιτιου, πρωτον τοτε γραφεις εξω προς την αγοραν δημηγορησαι, και το λοιπον ουτω ποιειν εξ εκεινου, μικρα παρεγκλισεις και μεταθεσεις σχηματος μεγα πραγμα κινησας, και μετενεγκων τροπον τινα την πολιτειαν εκ της αριστοκρατιας εις την δημοκρατιαν· ὡς των πολλων δοκει, υ τους βουλης τυγχανζεσθαι τους λογους. Plut. in C. Grac. p. 387.

[40] Μοναρχικη τις ισχυς εγγιγνεται περι αυτον· ὡστε και την συγκλητον ανεχεσθαι συμβουλευοντος αυτω· συνεβουλευε δε αει τι των εκεινη πρεποντων εισηγουμενος. Plut. in C. Grac. p. 387.

[41] Ὡστε και τους παυ μισουντας αυτον και δεδοικοτας εκπληττεσθαι το δια παντων ανυσιμον και τελεσιεργον. Ib. p. 388.

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ground to the ſide of the people; vying with him who ſhould moſt gratify their extravagant humour[42]. Caius, therefore, appearing no longer ſingular in his attachment to their cauſe, his intereſt daily declined; his laws were repealed; and, after various acts of violence on the part of the conſuls and nobility, being baſely deſerted by his former adherents, was himſelf driven to the fatal extremity of ſoliciting death, from the friendly ſword of a faithful ſlave.

This only reſtraint upon ſenatorial tyranny being now removed, the conſul, with unwonted arrogance, uſurped the dictatorial prerogative, by commencing a mercileſs perſecution againſt the partiſans of the Gracchi; three thouſand of whom were put to death by his command, without waiting the formality of a legal trial[43]. Soon after this, as if to ſhew all poſſible diſreſpect to the memory of theſe illuſtrious brothers, the proprietors of lands were indulged with a power of alienation, which had been expreſsly prohibited by the elder Gracchus. In virtue of this law, the poor were ſoon diſpoſſeſſed, either by money or violence; and, at laſt, one of the tribunes abrogated all the Agrarian laws; leaving the eſtates in the hands of the former owners, upon the payment only of a certain contribution, to be divided among the lower claſſes of the people. But even this was ſoon diſallowed by another tribune; ſo that the inferior orders having little left that could be called their own, the number both of freemen and ſoldiers daily diminiſhed; the public revenues decreaſed; the laws ſunk into contempt; and the regular adminiſtration of juſtice was relaxed and interrupted[44]. The national temper

A. U. C. 632.

[42] Η δι βυλη, δεισασα μη παντάπασιν αμαχος γενηται, καινην και ασυνηθη πειραν επηγε τοις πολλοις αποτροπης, απιδημαγωγησα και χαριζομενη παρα το βελτιστον. Plut. in C. Grac. p. 389.

[43] Ουτος μεντοι (ſc. Conſul Opimius) πρωτος εξουσια δικταλωρος εν υπατειαι χρησαμενος, και καταρινας ακριτους επι τρισχιλιοις πολιταις Γαϊον Γρακχον και Φυλλιον Φλακκον. Ib. p. 400.

[44] Απαξ δι τοις σοφισμασι τοισδι του Γρακχειου νομου παραλυθεντος, αρισα και φιλιμωταλα οι ανδρα-

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temper now took an entirely new turn; the free, but modeſt, ſpirit of the plebeians degenerated into turbulence and ferocity; and the ſevere, but humane, virtue of the patricians, into pride and imperiouſneſs.

Hitherto, all conteſts between the ſenate and people, though upon points of the utmoſt importance, and though ſupported with the greateſt obſtinacy and acrimony on both ſides, had been appeaſed by mutual conceſſions, and with due reſpect to the privileges and rank of each other. The worſt conſequences of their former diſputes ſeldom went beyond a ſeceſſion of the plebeians, till the grievances were redreſſed, or the differences accommodated. Their chief object was to ſecure themſelves from the oppreſſion of thoſe in power. The tribunes were the ſole conductors of their movements, the protectors of their rights, and the avengers of their quarrels [43]. Though the true ſpirit and efficacy of a free conſtitution were too often loſt in clamor and partiality, the aſſemblies of the "Comitia," and the ceremonials of the "Forum," were ſtill kept up with a reverent exactneſs. The moſt untractable frenzy of contention vented itſelf in noiſe and altercation; and ſwords were only drawn againſt the common enemy of their country. But now, for the firſt time ſince the expulſion of the kings, were popular inſurrections ſtained with the blood of Roman

ναΐο πραχθηναι γένομενω. και τως φορως ου πολυ ὑστερον διελυσε δημαρχος ἑτερος, και ὁ δημος ἁθροως ἁπαντων ἐξεκεκλωκει· ὁθεν ἐσπανιζον ἐτι μαλλον ὁμου πολιτων τε και ξραΐωτων, και γης προσοδου και διανομων, και νομων, πενΐεκαιδεκα μαλιστα ἐτεσιν απο της Γρακχω νομοθεσιας, επι δικαις ἐν αργια γεγονοτες. App. de Bell. Civ. p. 366-7.

[43] Ῥωμαιοις ὁ δημος και ἡ βουλη πολλακις ες αλληλους περι τε νομων θεσεως, και χρεων αποκοπης ἡ γης διαδατουμενης, ἡ ἐν αρχαιρεσιαις ἐστασιασαν· ου μην τι χειρων ἐργον ἐμφυλον ἡν, αλλα διαφορως μεναι, και ἐριδες ἐνομοι, και ταδε μετα πολλης αἰδους εικοντες αλληλοις διετιθεντο. Ὁ δε δημος πολε και συνερχομενος, ες τοιαυδε ἐρις ἐμπεσων, ουκ ἐχρησατο τοις ὁπλοις παρουσιν, αλλ' ες το ορος ἐκδραμων, το απο τυδε κληζομενον ἱερον, ουδεν ουδε τοτε χειρων ἐργον, αλλ' ἀρχην ἑαυτω προστατην ἀπεφηνε· και ἐκαλεσε δημαρχιαν, ες κωλυσιν μαλιστα των ὑπατων απο της βουλης αἱρουμενων, μη εἰλιες αὐλοις επι τη πολιτεια το κρατος ειναι. App. de Bell. Civ. p. 349.

citizens;

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citizens; the weapons of death glittered before the eyes of the miniſters of juſtice; and the peaceful ſeat of legiſlation was transformed into a field of carnage. Such were the fatal novelties reſerved for the preſent age of tumult and barbarity [46].

Decline of the democracy.

The democracy being now paſt its meridian, from henceforward the antient republican liberty, though often the cry of the day, became no more than a bye-word in the mouths of the crafty ring-leaders, and inſidious orators of the times, to faſcinate the ſenſes of an ignorant populace, and to make them the inſtruments of their own ſubjection. Conſpiracies, riots, and aſſaſſinations were authorized by the example and command of the ſupreme magiſtrates themſelves; law and good government were treated with diſreſpect and negligence [47]; and thus were fulfilled, with the ſevereſt tokens of heavenly vengeance, the prophetic imprecations of the perſecuted Caius; who, in the bitterneſs of his anguiſh, ſupplicated the deity to whoſe altar he had fled for refuge, that the Roman people might bewail their treachery and ingratitude in never-ceaſing ſlavery [48].

[46] Ταυτην πρωτην ισορυσιν ν Ρωμη γασιν, αφ' ὑ το βασιλευεσθαι κατελυσαν, αιματι και φονῳ πολιτων διακριθηναι· τας δι αλλας, ὑτι μικρας, ὑτι πιρι μικρων γινομενας, ανθυπατικοὶς αλληλοις, φοβῳ μιν ὁι δυνατοι των πολλων, αιδημοσι δι τη βουλη ὁ δημος, επαυον. Plut. in Tib. Grac. p. 379. Κικρατηκιν ηδη τα χειρω, βια και σιδηρῳ τας δικας ηδη πρατθυσι. Plut. in C. Grac. p. 397. And, in another author, Ξιφος δι ουδιν ων παρινεχθιν ις εκκλησιαν, ουδι φονον ιμφυλον πριν γι Τιβεριος Γρακχος δημαρχων, και νομους ασφιρων, πρωτος ν γασι απωλιτο. App. p. 349. C. Gracchus tunis et iis ſicis, quas ipſe ſe projeciſſe in forum dixit, quibus digladiarentur inter ſe cives, nonne omnem reipublicæ ſtatum permutavit? Cic. de LL. 3. 9. For a fuller account of this famous conteſt about the Agrarian laws, in which the future fate of Rome was ſo deeply intereſted, the reader is referred to the lives of the two Gracchi, as written by Plutarch; to the firſt book of Appian's Hiſtory of the Civil Wars; and to Mr. Hooke's Roman Hiſtory, book 6. chap. 7—10.

[47] Ουκ απισχον ετι αι γασις ιπι τῳδι τῳ μυσει, διαιρουμινων ικαστοτι σαφως απ' αλληλοις, και εγχιριδια πολλακις φιρόντων, πτινυμινης τι τινος αρχης ικ διαγηματος ν ιιξοις, η ικκλησιαις, η αγοραις, δημαρχων, η γραττηγων, η υπατων, η των ις ταυτα παραγηγιλλοντων, η των αλλως ιπιφανων· ὑβρις τι ακοσμος ιπιιχιν αιιι δι' ολιγου, και νομων και δικης αισχρα καταφρονησις. App. de Bell. Civ. p. 349, &c.

[48] Ενθα δη λιγεται καθισθεις ις γονυ, και τας χιρας ανατινας προς την Θιον, ιπευξασθαι, τον Ρωμαιων δημον αντι της αχαριστιας ικινης και προδοσιας μηδιποτι παυσασθαι δηλαδη. Plut. in C. Grac. p. 398.

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Cauſes and conſequences of the Social War.

While Rome was proceeding in the full career of ſucceſs againſt her foreign enemies, a new flame broke out under her own walls, and was not extinguiſhed without a conceſſion, which, while it aimed at the extenſion of the popular government, haſtened its deſtruction. The petty nations of Italy, who, at divers periods, had received the yoke of Rome, gradually forgot their animoſities, and from profeſſed enemies and rivals, became her ſteady friends and allies; aided her with their arms, contributed to her good fortune, and partook of her glory. Though conſidered in the light of ſubjects, they enjoyed their own free ſyſtems of domeſtic policy; and were governed by their own municipal laws, with a participation of various privileges of Roman citizens, according to the reſpective terms of their original union. But at laſt aſſuming to themſelves a conſequence from their former ſervices, in which they were too much encouraged by the ſeditious declamers in Rome itſelf, they demanded to be put upon an equality, and to be admitted to a general right of ſuffrage, with the inhabitants of the city [49].

To effect this, an attempt had been made ſeveral years before by Caius Gracchus, but was ſoon rendered abortive by thoſe commotions, which put an end both to his laws and life. It was now renewed by Livius Druſus, a ſucceſſor in the ſame office, who eſpouſed the cauſe of the allies with great aſſiduity.

The accounts left us by the antient hiſtorians, of this buſtling tribune, are ſo confuſed and unſatisfactory, that it is difficult to form an accurate idea of his character, or to underſtand the real motives of his conduct. Though generally repreſented as a warm and partial friend to the ſenate [50], he was at frequent variance with its mem-

49 Τουτου γαρ δη μαλιστα επιθυμουν, (ſc. Ιταλιωται) ως ιη τωδι αυτικα ηγεμονες αντι υπηκοων εσομενοι. App. de Bell. Civ. p. 371.

50 "Druſi tribunatus pro autoritate ſenatus ſuſceptus." Cic. de. Orat. 1. 7. As if this had been his ſole inducement to undertake the office.

bers,

bers, even while laboring to ſupport their dignity[52]; and, at other times, as deeply embarked in direct oppoſition. But ſuch inconſiſtencies are not uncommon with officious and inconſiderate politicians; who, by an injudicious affectation of keeping upon fair terms with, and of exerciſing a promiſcuous influence over, oppoſite parties, forfeit the confidence of them all. Thus, to reconcile the differences between the ſenatorial and equeſtrian orders, he propoſed a law, to appoint a certain number of judges out of each, which unfortunately diſguſted both: the ſenators being offended at this mixture, from an apprehenſion of its becoming a perpetual ſource of diſagreement; and the knights, from a ſuſpicion that their aſſociates in office would thereby engroſs the whole power to themſelves[53]. To ſatisfy the allies, he promiſed them the freedom of the city; and to ingratiate himſelf with the people, led out ſeveral colonies into Italy and Sicily, for which a law had long ago been enacted, but the operation thereof as yet ſuſpended[54].

Though Druſus, in all his regulations, appears to have had the welfare of the Italians the moſt ſincerely at heart, this act of juſtice to his countrymen gave them no ſmall diſſatisfaction. The diviſion of the lands, ſo long neglected, they conſidered as poſtponed for ever: while the rich, either by force or cunning, having ſeized upon conſiderable tracts, and become troubleſome to their neighbours, were trembling at the apprehenſion of being called to a ſevere

[52] "Qui quum ſenatui priſcum reſtituere "cuperet decus, et judicia ab equitibus ad "eum transferre ordinem,—in iis ipſis, quæ "pro ſenatu moliebatur, ſenatum habuit "adverſarium." Vell. Pat. 2. 13.

[53] Την τε βουλην και τους ἱππεας, οἱ μαλιστα δη τοτε αλληλοις δια τα δικαστηρια διεφεροντο, επι κοινῳ νομῳ συναγαγειν επειρατο· σαφως μεν ου δυναμενος ες την βουλην επανενεγκειν τα δικαστηρια, τιχναζων δ' ες ἑκατερους ὠδι.—απιοντι δε ες το ἑαυτου αυλιον, &c. App. de Bell. Civ. p. 371-2.

[54] Λιβιος Δρουσος δημαρχων, ανηρ επιφανεστατος εκ γενους, διηθεισι τοις Ἰταλιωταις νομον αυθις εισενεγκειν περι πολιτειας ὑπεσχετο.——ὁ δε, τον δημον ες τουτο προθεραπευων ὑπηγητο αποικιαις πολλαις ες τε την Ἰταλιαν και Σικελιαν, ἐψηφισμεναις μεν εκ πολλου, γεγονυιαις δε ουπω. Id. p. 371.

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account for their exactions[55]. Thus, by tampering too much with all parties, he excited a general oppoſition againſt himſelf; and, before he could carry his laws into execution, was ſuddenly cut off by a ſecret aſſaſſination[56].

This reſtleſs ſpirit, which attached him occaſionally to ſuch a diverſity of incompatible intereſts[57], has been aſcribed, in part, to an exceſs of pride and ambition[58]; and partly, to a profuſe liberality, that often laid him under the neceſſity of condeſcending to artifices, very unbecoming his high rank and ſtation, either to give new life to his declining power, or to repair his broken fortune[59]. But whatever might have been its motive, it was the chief cauſe of a fatal breach between Rome and her moſt natural allies, directly tending to a ſubverſion of the conſtitution.

A. U. C. 662.

The Italians, diſappointed of thoſe hopes which his ardor in their ſervice had excited, entered into a league with each other, in ſupport of their own pretenſions; and, after a reſolute and bloody conteſt, forced the Romans, by degrees, to yield to their demands, and to confirm the charter of theſe viſionary liberties.

[55] Μονος ὁ δημος ἐχαιρε ταις αποικιαις. Οἱ Ἰταλιωται δ', ὑπερ ὧν δη και μαλιστα ὁ Δρουσος ταυτα ἐτιχχαζε, και οἱ δι' ὑπερ τῳ νομῳ της αποικιας ἐδεδοικεσαν, ὡς της δημοσιας Ῥωμαιων γης (ἡν ανιμητον ουσαν ἐτι οἱ μεν, ἐκ βιας, οἱ δι λαθραιοτερας ἐγεωργουν) αυτικα σφων αφαιρεθησομενης, και πολλα ὑπερ της ἰδιας ἐνοχλησομενοι. App. de Bell. Civ. 372.

[56] "Unde in ſenatu accuſatus, cum do-
"mum ſe reciperet, immiſſo inter turbam
"percuſſore, corruit." Sext. Aur. Vict. de vir. illuſt. c. 66. And thus, more particularly; ὡς ὁ Δρουσος αισθομενος τι, και ου θαμινα προϊων, αλλ' ἐνδον ἐν περιπατῳ βραχυφως ἐχων τι χρηματιζων ἀει, και περι ἑσπεραν το πληθος ἀπορριπτων, ἐξιδοντος αφνω, πεπληχθαι και λεγειν ἐτι, κατεπεσων, ευρεθη δι ἐς τον μηρον αυτῳ σκυτοτομου μαχαιριον ἐμπεπηγμενον. ὁυτω μεν δη και Δρουσος ἀπηρτο δημαρχων. App. de Bell. Civ. p. 372.

[57] "Tribunus plebis Latinis civitatem,
"plebi agros, equitibus curiam, ſenatui
"judicia, permiſit." Sext. Aur. Vict. de vir. illuſt. c. 66.

[58] "Marcus Livius Druſus, genere et elo-
"quentia magnus, ſed ambitioſus et ſuper-
"bus." Id. ib.

[59] "Nimiæ liberalitatis fuit, —— ideoque
"cum pecunia egeret, multa contra digni-
"tatem fecit." Id. ib.

Though

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Though in poſſeſſion of the chief object of their wiſhes, and exulting in their preſent ſucceſs [60], they had little reaſon, upon the whole, to be proud of the acquiſition. Their old maſters ſtill reſerved the power of preſcribing the terms of the incorporation; and to prevent the native citizens from being overpowered by ſuch a tide of foreigners, declined admitting the Italians into the antient thirty-five tribes, but formed them into a ſmall number diſtinct from the reſt [61]; not allowing them to give their ſuffrages, till after the old ones had been called out in their legal order. By this politic diſtribution they were deprived of the only valuable part of the privilege for which they had ſo long been contending; and ſeldom found an opportunity of exerciſing it to any other purpoſe, than that of increaſing the confuſion of the popular aſſemblies.

As the right of voting, likewiſe, could be exerciſed only within the walls of Rome, it hardly compenſated the charge and trouble of a journey from the remoter parts of Italy; ſo that the neighbouring cities alone could enjoy the benefit with any tolerable convenience. But the legiſlative body being already too much incumbered by its original weight, every addition to its bulk made it ſtill leſs fit for action than before; and ſupplied more ſpace for the ſeeds of diſſenſion to grow up to their full maturity. Thus, "by the in-" trigues of the great and ambitious, the "Comitia" were converted " into combinations of conſpirators; the authority of the people, " their laws, and even themſelves, were declined into mere phan-" toms; and ſo prevailing was the anarchy, that it was impoſſible to

[60] Ιταλιωτων τους μεν εν τη συμμαχιᾳ παρεμεινοντας ἐψηφισαντο (ſc. ἡ βουλη) εινα πολιτας· ὧν δη μαλιστα μεσον ωαλις επεθυμουν. App. de Bell. Civ. p. 379.

[61] Ῥωμαιοι μεν δη τουσδε τους πεπολιτας, ουκ ες τας πεντε και τριακοντα φυλας, ἀλ' ἑπτα ηδαι αὐτοις κατεξαν (ἱνα μη των αρχειων αλλοις οὐις: ες τας χειροτονιας επικρατοιεν) αλλα διαλυσοιεν: απρηκτον ἑτι ἀις ισχυοντουν εσχατα, και ωολλακις αὐτων ὁ ὁμιλος αρχοντας μεν ἀντι της φυλης και τριακοντα ἑρετας τεταλαιπωρουν και ὑστερον ὑπατους: Ibidem.

" diſcern

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" diſcern whether the acts of the legiſlature were ever brought " their full completion [62]."

The diſtant boroughs, unconnected with each other, and unconcerned for the honor and tranquillity of the parent-city, were indifferent to the ordinary calls of government, though at all times ready to obſtruct the regular adminiſtration of it with cabal and uproar. Obedient to the voice of faction, they blindly followed the ſtandard of the intriguing demagogues of the times, wretches of diſſolute morals, decayed fortunes, and deſperate views; who, unwilling to ſtretch forth even a finger to uphold a ſinking ſtate, were eagerly ſtraining every nerve to involve it in ruin, and waiting with anxious expectation for the burſting of the ſtorm, to enrich themſelves by the plunder of the wreck.

The powers of the antient conſtitution, and the force of the eſtabliſhed laws, being quite enfeebled by this continued ſucceſſion of civil diſcord; the heads of the contending factions devoted each other to mutual deſtruction, without reſtraint or remorſe; while Rome herſelf ſtood in the midſt, like a trembling victim, deſtined to bleed whoever ſhould be the conqueror [63]. The ſenate was ſet againſt the people, and the people againſt the ſenate; liberty was the general pretence on both ſides, and by both equally abuſed.

[62] For the ſubſtance of theſe obſervations we are indebted to a very able maſter of political knowledge, who, in his remarks on this event, adds, " Les ambitieux firent venir à Rome " des villes et des nations entières, pour " troubler les ſuffrages, et ſe les faire donner; les aſſemblées furent de véritables " conjurations; on appella *Comices* une " troupe de quelques ſéditieux: l' autorité " du peuple, ſes loix, lui-même, devinrent " des choſes chimeriques; et l' anarchie fut " telle, qu'on ne put plus ſçavoir ſi le " peuple avoit fait une ordonnance, ou s'il " ne l'avoit point faite." Monteſquieu ſur la Grandeur et Decadence des Romains, c. 9. A work earneſtly recommended to the reader's peruſal.

[63] Μετα δε τουτο στρατοις μεγαλοις οι στασιαρχοι πολεμου νομω συνεπλεκοντο αλληλοις, και η φατρις αθλον ειχετο ω μαχη. App. de Bell. Civ. p. 383. Εν Ρωμη τοτε, διεφθαρμενου του δημου, και νοσουντος αυτοις του πολιτευματος, αλλος αλλαχοθεν απηρατο δυναστης. Plut. in Par. Lyſ. & Syll. p. 99.

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Effects of the conteſts between Marius and Sylla.

Of theſe peſts of their country, the moſt celebrated, as well as the moſt miſchievous, were Marius and Sylla. The firſt, a ſteady champion of the people, not from any principle of humanity or patriotiſm, but from a ſympathy of manners, and a ſimilarity of condition; not with a deſign of protecting them in the enjoyment of decent liberty, but of encouraging them in wild licentiouſneſs: the other, a no leſs warm patron of the nobles, not indeed to reſtore their authority, but to make them more dependent upon himſelf: while the equal aim of both was, to avail themſelves of the aſſiſtance of their reſpective partizans, in ſupport of their own uſurpation.

Marius, from a mean and obſcure origin [64], roſe, by his perſonal valour, to the higheſt honors of the ſtate; but diſgraced the conſular chair with the ſame rude deportment which he had contracted in his native cottage. Plain and parſimonious by education and habit, he deſpiſed elegance and ſplendor, for want of taſte to enjoy them [65]; and hated the patricians, from a conſciouſneſs, perhaps, of being totally unqualified for their ſociety. His whole behaviour to the ſenate was actuated by a ſullen and determined averſion, which induced him, on every occaſion, to connect himſelf with its moſt bitter and inveterate enemies. With this view he contracted an intimate friendſhip with the tribune Sulpitius, one ſo conſummately vicious, that it is recorded of him, "a more abandoned mon-" ſter could no where be found, except when he excelled himſelf " in wickedneſs [66]." This daring incendiary, being always provided

[64] Γενομενος δε γενει φαυλοτατοις αδοξων, αυτυργων δε και πενητων. Plut. in C. Mar. p. 485.

[65] Οψε ποτε πολιν ειδε, και των εν πολει διατριβων εγευσατο, τον δε αλλον χρονον εν κωμη Κιρραιατων της Αρπινης διαιταν ειχε, προς μεν αγριον και γλαφυρον βιον, αγροικοτερα, σωφρονα δε, και ταις παλαι Ρωμαιων τροφαις εοικυιαν. Plut. in C. Mar. p. 486.

[66] Μαριος δε παραλαμβανει Σουλπικιον, ανθρωπον υβρινος δευτερον εν ταις αλλαις πανιαις· ὡστε μη ζητειν τινος εστιν ἑτερου μοχθηροτερος, αλλα προς τι μοχθηροτατος ἑαυτου, Plut. in Syll. p. 55.

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with a choſen regiment of deſperate ruffians, whom he diſtinguiſhed by the title of his anti-ſenatorial band, inſulted the authority of that illuſtrious body with all kinds of indignity, till he terrified it into an entire ſubjection to his pleaſure [67].

By the intrigues of this active aſſociate, and by flattering the hopes of the allies, with the promiſe of admitting them to an equal right of ſuffrage with the antient tribes, Marius procured a law, which, in effect, gave him an abſolute ſway both over ſenate and people [68]. To eſtabliſh himſelf ſtill further in the exerciſe of this uſurped power, he put arms into the hands of ſlaves and vagabonds [69], in defiance of the fundamental laws of the commonwealth; and expoſed the patrician order to the inſolence and affronts of the vileſt dregs of the community [70].

[67] Επηφε δε και τριχιλιους μαχαιροφορους, και πληθος ἱππικων νεανισκων προς ἁπαν ἑτοιμων περι αὐτον ειχεν, ὁυς αντισυγκλητον ωνομαζε. Id. ib. The following more general deſcription is given of him by an hiſtorian who lived ſtill nearer to his own time: "P. Sulpicius, "tribunus plebis diſertus, acer, opibus, gratia, amicitiis, vigore ingenii atque animi "celeberrimus; quam antea rectiſſima voluntate apud populum maximam quæſiſſet dignitatem, quaſi pigeret eum virtutum ſuarum, et bene conſulta ei male cederent, ſubito pravus et præceps, C. Mario, poſt ſeptuageſimum annum omnia "imperia et omnes provincias concupiſcenti addixit, legemque ad populum tulit, qua "Syllæ imperium abrogaretur, C. Mario "bellum decerneretur Mithridaticum; aliaſque leges perniciosas et exitiabiles, "neque tolerandas liberæ civitati tulit." Vell. Pat. 2. 18.

[68] Μαριος—επιθυμων της στρατηγιας, υπηγαγετο τον συμπρασσειν εις τουτο Ποπλιον Σουλπικιον δημαρχον υποσχισεσι πολλαις, και τους εκ της Ιταλιας πολιτας, μειονεκτουσας επι ταις χειροτοναις, επηλθε πασι εις τας φυλας ἁπασας διαιρησειν. ου προλεγων μεν τι περι της ἑαυτου χρειας, ὡς δε ὑπηρεταις εις παντα χρησομενος ευνοις. και νομον αὐτικα ὁ Σουλπικιος εισφερει περι τουδε· ου κυρωθεντος εμελλε παυσειν, τι βουλοιτο Μαριος η Σουλπικιος εσεσθαι, των πολιτων πολυ παρα τους αρχαιους ελαττονων οντων. App. de Bell. Civ. p. 383. Ἡ συγκλητος ην, μεν ουχ ἁυτης, αλλα τοις Μαριω και Σουλπικιω διηκειτο προσταγμασι. Plut. in Syll. p. 56.

[69] Αναγορευθεις δε λαμπρως (ſc. ὑπατος), ευθυς εξρατολογει παρα τον νομον και την συνηθειαν, πολυν τον απορον και δελον καταγραφων· των προσθεν ἡγεμονων ου προσδεχομενων τους τοιουτους, αλλ' ὡσπερ αλλο τι των καλων, τα ὁπλα μετα τιμης τοις αξιοις νεμοντων, επιχυρον την ὑσιαν ἑκαστω τιθεναι δοκουντος. ου μην ταυτα γε μαλιστα διεβαλλε τον Μαριον, αλλ' οι λογοι θρασεις οὶις ὑπεροψια και ὑβρει τους πρωτους ελυπουν. Plut. in C. Mar. p. 492.

[70] Ταυτα δε ου κενως υδε αλαζονικως ελεγεν, υδε ματην απεχθανεσθαι τοις δυναλοις βουλομενος, αλλ' ὁ δημος αὐτος, ἡδομενος τι τη βουλη προσπλακιζομενη, και λογω κομπω, μετρον αει φρονημαιος και μεγεθος εξικνεισθαι, και συνιεμενον μη φειδεσθαι των αξιολογων, χαριζομενον τοις πολλοις. Id. ib.

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Ambitious of a continuance in the conſulſhip, which he had already enjoyed, contrary to law[71], for four ſucceſſive years, as a reward of his victories over the "Cimbri," he courted the favor of the people by a mean adulation, not only beneath the dignity of the office itſelf, but inconſiſtent with the roughneſs of his own character[72]. Caſt in the ruder mould of nature; formed only for war and enterprize; and wholly incapable of ſhining in the arts of peace; he cunningly ſtrove to make his ſervices neceſſary, by involving the ſtate in a perpetual tumult; affecting a contempt for law and civil policy; and ſatisfying himſelf with the poſſeſſion of the conſular faſces, without wiſhing to acquire them by merit or virtue: and thus he deſervedly incurred the deteſtation, not only of the whole body of the nobility, but of all perſons of worth and honor[73].

Still indefatigable in miſchief, he entered, towards the cloſe of his life, into a league with Saturninus, another tribune of the ſame ſeditious temper; by whoſe aſſiſtance he enacted an Agrarian law, with the addition of a clauſe, obliging the ſenate to take an oath, to confirm whatever the people ſhould decree, and to oppoſe them in nothing[74]. Thus were they gratified with a deceitful liberty, not leſs fatal to their opponents than to themſelves: a liberty bereft of ſenſe, which hurried them through every exceſs of wild diſorder,

[71] Roſ. Ant. Rom. 7. 9.

[72] Πειμπλην μεν ων υπαλιαν διειπε της δε ικτης, ως υδε ις πρωλος ωρητο, θηρατειας τον δημον αντελαμβανε, και προς χαριν ενιδιδους τοις πολλοις, η μονον παρα τον ογκον και το κοινον αξιωμα της αρχης, αλλα και παρα την αυτου φυσιν, υγρος τις ων βουλομενος και δημοτικος, υπτια τοιουτος πιφυκως. Plut. in C. Mar. p. 517.

[73] Ενιοι δε τον νομον δια των των οπλων φοβον η καταπληξιν. η μην αλλα μαλλον εοικεν εκπλησσεσθαι και δεδιεναι την εν ταις εκκλησιαις κραυγην. ει μεν γε τοις οπλοις αξιωμα και δυναμιν ειχε, δια την χρειαν αν δε τη αυθαδειαν περικοπτομενος τα πρωτεια, κατεφευγεν επι την των πολλων ευνοιαν και χαριν, υπερ το μεγιστος γενεσθαι, το βελτιστος ειναι πρεπομενος. πασι μεν ουν προσηκεν τοις αριστοκρατικοις. Id. ib. p. 518.

[74] Και μαλιστα περι την τελευταιαν εφθονειτο, πολλα συνεξαμαρτανων τοις περι τον Σατορνινον——— ειτα δημαρχων (sc. Σατορνινος), επηγε τον περι της χωρας νομον, η προσεγγραφεν, τον συγκλητον ομοσαι προσιλθυσαν, η μεν εμμενειν οις αν ο δημος ψηφισαιτο, και προς μηδεν υπεναντιωσεσθαι. Id. ib. p. 519.

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till it ended in a determined ſpirit of diſobedience to all lawful authority; and almoſt diſſolved the very bonds of their ſocial union.

But the miſeries of Rome were not alleviated by the death of Marius. His rival, in no reſpect behind him in ambition, healed one wound only by opening another; and in the room of a democratical anarchy ſubſtituted an almoſt abſolute monarchy[75].

The hopes of the dejected patricians began to revive under the auſpices of Sylla, who affected to patronize their drooping cauſe; though not ſo much with a view of reſtoring their diminiſhed luſtre, as of oppoſing them againſt the Marian faction; and, in due time, of making ſlaves of them all[76]. Wholly intent upon advancing his own grandeur, he ſtudied the moſt refined arts of oppreſſion; made murder his amuſement, and employed every terror that could enforce ſubmiſſion. To his eternal infamy, he ſtands foremoſt in the records of barbarity, as the inventor of thoſe bloody proſcriptions and maſſacres, that, in a ſhort courſe of years, extinguiſhed the moſt noble and reſpectable families in old Rome[77]; and convinced even the moſt ſtupid and inſenſible among the people, that they had only exchanged one tyrant for another, without having obtained any mitigation of the tyranny itſelf[78]. The titles of conſul, proconſul, and dictator, which he aſſumed in turn, were only ſo many different names of the ſame thing[79]; mere familiar diſtinc-

[75] Κορνηλιος Συλλας, κακῳ το κακον ιωμενος μοναρχον αὐτον απεφηνε επι πλειστον. App. de Bell. Civ. p. 350.

[76] Ες τους ὑπολοιπους ὁ Συλλας ουδεν δεινον και καθ' ὑπα και κατα πολεις εξελιπε δρων· μεχρι και μοναρχον ἑαυτον απεφηνε της Ῥωμαιων αρχης ὁλης, ὡφ' ὁσον ισχυζε τι και ἑβουλετο. App. de Bell. Civ. p. 400.

[77] Ὁυτος δοκει πρωτος ὁυς εκολασε θανατῳ προγραψαι, και γερα τοις απαιρουσι, και μηνυματα τοις ελεγχουσι, και κολαζεις τοις κρυπτουσιν επιγραψαι. App. de Bell. Civ. p. 409.

[78] Τουτο και τῳ βραδυταλῳ Ῥωμαιων νοησαι παρεσησεν, ὡς αλλαγη το χρημα τυραννιδος, ου απαλλαγη γιγνοι. Plut. in Syll. p. 88.

[79] Ὁ δι, ἁπαξ αἱρεθεις στρατευματος ἡγεμων, επι συνεχως δικα, τον μεν ὑπαλον, τον δι αυθυπατον, τον δε δικταιωρα ποιων ἑαυτον, ουδε ων τυραννος, ὡ τοις ὁπλοις ἡμενον. Plut. in Paral. Lyſ. & Syll. p. 100.

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tions to ſoften the harſher ſound of king[80], which he was, to every effectual purpoſe of real deſpotiſm.

Sometimes, indeed, to ſave appearances, he ſuffered the conſuls and other magiſtrates to be elected in the ordinary courſe. But to reſtrain them from exerting the conſtitutional powers of their offices, he himſelf cautiouſly preſided over the whole, with all the pomp and retinue of the antient monarchs; enacting laws by his own ſupreme authority[81], many of which are ſtill extant, under the name of "Leges Corneliæ." The law to prohibit all perſons, who had borne the office of tribune, from being elected into any of the higher magiſtracies, has been mentioned upon a former occaſion[82]. This maſter-ſtroke of policy removed the only obſtacle which ſtood in the way of his ambition: for being no longer an object of deſire to the nobility, it returned of its own accord to its original principles; and, though not deſtroyed in fact, was reduced to ſuch a ſtate of debility, as to be in no condition to enter the liſts againſt a perpetual dictator.

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But of all the circumſtances, in the eventful hiſtory of this fortunate uſurper, none is ſo truly wonderful, as his voluntary abdication of that power, which he had obtained by ſuch immenſe toils and dangers[83]. That he, who had ſo inſolently trampled upon the laws, ſhould deſpiſe their vengeance, when within their reach; that he, who had ſpread ruin and deſolation throughout the land,

[80] Τινες αυτω την αρχην, αξιουμενην βασιλειαν επισκωπτοντες εκαλουν· ὁτι το τε βασιλεως ονομα μονον επικρυπτοι· δι δ' επι τυραννιδι απο των εργων μετεφερον, και τυραννιδα ὁμολογουσαν ελεγον. App. de Bell. Civ. p. 414.

[81] Ὁ δ' ες μεν προσχημα της πατριου πολιτειας, ὑπατους αυτοις επετρεψεν αποφηναι·—αυτος δ' ὁια τη βασιλευων, δικτατως επι τοις ὑπαλοις ην· πλειστα γαρ εφερετο προ αυτου, ὁια διπτυχος, εικοσι και τεσσαρες (ὁσοι και των παλαι βασιλεων ἡγουντο) και φυλακην τε σωματος περιεθετο πολλην· νομους τε εξεδιδου, και ετερους ετιθετο. App. de Bell. Civ. p. 412.

[82] P. 96.

[83] Λογον δ' ηδη και το, βιασαμενον ες την αρχην ξυν ὁκνηδονως, ὡσπερ τε υπ' ερωτος ὑφειτο, ικανα απο θισθαι. App. de Bell. Civ. p. 415.

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ſhould be diſtinguiſhed by a title denoting his peculiar *felicity* [34]; and that the very people who had ſo loudly demanded at his hands the blood of their ſlaughtered parents, children, and friends, ſhould attend his funeral obſequies with all thoſe tokens of affection and applauſe, that were due only to the moſt virtuous protector of his country's liberties [35]; are facts, which, though revolting againſt the natural ſenſe of mankind, and inexplicable upon every principle of common reaſon, afford too pregnant proofs of that ſervile and wretched ſtate of deſpondency, to which the real ſpirit of tyranny, when exerted with ſuch unremitting perſeverance, may reduce the freeſt and braveſt part of the human ſpecies.

Good fortune alone, to which the uninterrupted ſucceſs that attended every undertaking of Sylla has been too careleſsly and ſuperſtitiouſly aſcribed, was by no means a cauſe adequate to ſuch great and uniform effects. A ſcheme of power, ſo fundamentally oppoſite to the true genius of the Roman conſtitution, could never have been impoſed by the mere dint of brutal violence, had it not been likewiſe enforced by the malicious artifices of a moſt profound cunning; which induced the author of it to be as profuſely bountiful to the objects of his favor [36], as inexorably ſevere to thoſe of his hatred. This was the profeſſed maxim by which he invariably regulated his whole conduct [37]; and by thus operating upon the

[34] Νομω γαρ η χειροτονητος η κληρω λογος εκ ην ετι, σιφρικοτων υπο δεους παλιν, και κρυπτομενων η σιωπωντων· η και παντα ὁσα διωκησεν ὁ Συλλας ὑπαλειπων τι και ανυπατευων, βεβαια και ανενδυτα ενηφιζοντο ειναι. εικονα τε αυτου επιχρυσον επι ἱππου στας των εμβολων ανεθεσαν και ὑπεγραψαν, ΚΟΡΝΗΛΙΟΥ ΣΥΛΛΑ, ΗΓΕΜΟΝΟΣ ΕΥΤΥΧΟΥΣ. ωδι γαρ αυτον οι κολακες διευτυχουντα επι τοις εχθροις ωνομαζον, και προηλθεν ες βεβαιον ονομα ἡ κολακεια. App. de Bell. Civ. p. 410.

[35] Ὡς δ' επι το αστυ εκηχθη, εσεφερετο μετα πομπης ενταυθα δη μαλιστα ὑπερογκου. γεφυροι τε γαρ διεζευγμενοι πλειους απο χρυσου κατα σπουδην γιγομενοι παρεφερονθο, δωρα των φιλων και των ὑπ' αυτω στρατευσαμενων τιλων, και καθ' ἑνα των φιλων· αλλη τε των ες ταφην σεμνοτητων ου δυνατη φρασαι πολυτελεια. App. de Bell. Civ. p. 417.

[36] Επει τοινυν εκρατησε της Ἰταλιας ὁ Συλλας, και βεβαιως ανηγορευθη, τους μεν αλλως ἡγεμονας και στρατηγους ημειβετο, πλουσιους ποιων, και προαγων επ' αρχας, και χαριζομενος αφθονως και προθυμως, ὡν ἑκαστος εδεῖτο. Plut. in Pomp. p. 426.

[37] Το επιγραμμα φασιν αυτον ὑπογραψαμενον καταλιπειν, ὡ κεφαλαιον ἡγου, ὡς ὁτι των φιλων τις αυτον ευ ποιων, ὁτι των εχθρων κακως, ὑπερβαλετο. Plut. in Syll. p. 98.

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paſſions of ſome by hope, and of others by fear, he effectually ſecured himſelf from the oppoſition of both.

The ſenate in general, with numerous parties of the equeſtrian, plebeian, and military orders, were earneſt in his cauſe, from motives of ſelf-intereſt; while the reſt, who dreaded the weight of his anger, and were yet ſore with their former ſufferings, neither dared to reſiſt his meaſures, nor inſult his memory; fairly acknowledging, that he had been moſt indulgent to their opponents, but was terrible to themſelves, even in death [38].

Plutarch has left us an anecdote, which ſets his cruelty in ſo ſtrong a light, that we cannot omit this opportunity of preſenting it to the reader's notice. From the great exceſs of it, his houſe was juſtly compared to a place of execution. When Cato the Younger, therefore, was introduced thither in the earlier part of his life, and ſaw the heads of many illuſtrious perſons carried out from thence in heaps, while they who were preſent viewed the bloody ſpectacle in trembling ſilence; he cried out, in a tranſport of rage, "Why will "no one put ſuch a wretch to death?" "Becauſe," ſays his maſter, "they fear, more than they hate, him." "Why then," replies the high-ſpirited youth, "do you not give me a ſword, that by "deſtroying him I may redeem my country from ſlavery [39]?" But Cato was then too feeble to ſtrike ſo glorious a blow, and the better

[38] Βρηδ' επενφημουν ἡ τε βουλη πρωτη και οι ἱππεις ειν μερει, ειθ' ὁ στρατος, ειθ' ὁ δημος, οι μεν, τῳ ὀντι Συλλαν επικροδουντες ὁι δε, διημαρτοντες αυτου και τουτι τον στρατον και τον νικην ουχ ἡττον η περιοντος ις τι γαρ την οψιν των γιγνομενων αποβλεποντες, και ις την μνημην ὡν εδρασεν ὁ ανηρ, εξεπλητ[illegible], και ὁμολογουν τοις εναντιοις ευτυχεστατον αυτον εκεινοις γεγονεναι, και σφισι και τεθνεωτα φοβερωτατον. App. de Bell. Civ. p. 417.

[39] Ὁ Σαρπηδων (ſc. Magiſter Catonis)—κγει—τον Κατωνα συνεχως εις την οικιαν τυ Συλλα, μηδεν τοτε περαιτερω αυτου χωρις διαφθειραι, ὑπο πληθους των αγομενων και σφαττομενων. κ' μεν ὡν ετος εκεινο τω Κατωνι τεσσαρεκαιδεκατον. ιδων δε περφαλας επιφανων ανδρων λεγομενων εκκομιζομενας, και κρυφα τας παροιας επιστενοντας, ηρωτησε τον παιδαγωγον, ὁτι δη τουτον τον ανθρωπον υδεις αποκλινουσιν. επειδη δ' εκεινος, Φοβουνται γαρ αυτον, ω παι, μαλλον η μισουσιν. τι ουν, εφη, ουκ εμοι ξιφος εδωκας, ἱνα αυτον ανελων απαλλαξω δουλειας την πατριδα. Plut. in Cat. Min. p. 218.

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able durſt not attempt it; ſo that this plague of his country not only died in peace, but was interred with honor.

The firm ſpirit of the ancient republic being now broken down by repeated oppreſſions, and the diſtractions of the ſtate increaſed beyond the hopes of remedy, the people, deſpairing of the reſtoration of their antient liberty, went only in ſearch after the moſt gentle bondage [90].

Appearance of Pompey.

Of all the candidates for ſovereign power, who had been educated in the tyrannical ſchool of Sylla, none gave ſo promiſing expectations of improvement under his tuition, as Pompey, hereafter ſurnamed the Great. Though the hopes of the nobility reſted much upon this young patrician; and though he generally pretended a partiality to their cauſe, as far as it ſtood in competition with that of the people; yet he certainly affected a ſuperiority over his equals, from his very firſt entrance upon the ſtage of politics [91].

The quick-ſighted jealouſy of Sylla eaſily diſcerned, that a young man of ſuch high rank and connexions, with a genius ſo ripe and enterpriſing, muſt ſoon render himſelf either a ſerviceable friend, or a formidable rival. He therefore prudently cultivated his alliance by every poſſible mark of public eſteem; among the reſt, by riſing to ſalute him at his approach; which, though a compliment of ceremony alone, muſt be taken, as really intended, for a moſt ſignificant act of condeſcenſion in a proud dictator, who conſidered every other member of the ſtate as the ſlave of his will [92]. To ſtrengthen this attachment by a ſtill more forcible inſtance

[90] Εις τουτο προηγαγον αι συμφοραι την πολιν, ως δουλειαν επιεικεστεραν ζητειν, απογνωσει της ελευθεριας. Plut in Pomp. p. 423.

[91] A remarkable inſtance of this is given by Plut. in Pomp. p. 423.

[92] Χρησιμωτατος ην τοις μαλιστα ὁδε ὁ ανηρ (ſc. Πομπηϊος) εγενετο τῳ Συλλᾳ. ὁθεν αυτον ὁ Συλλας ετι νεωλαιον ονλα ηγεν εν τιμῃ, και επιονλος, φασιν, ὑπαντᾳλο μοιρᾳ. App. de Bell. Civ. p. 399. —Ὑπεξανιστατο τε προσιοντι τῳ Πομπηϊῳ, και της

inſtance of confidence, he gave him his own daughter-in-law, though already great with child by another huſband, having firſt prevailed upon Pompey to divorce his own wife:—a moſt tyrannical proſtitution of the ſacred rites of marriage, that ſoon produced many tragical events in both their families [91].

But friendſhip with tyrants, like a houſe built upon the ſand, can endure no longer than while ſupported by convenience or inclination. The promiſing talents of Pompey, his rapid victories, and the extraordinary honors, prematurely conferred upon him by a deluded people, filled the mind of Sylla with perpetual anxiety [94]. Aſhamed, however, to oppoſe him openly during his life, he contented himſelf with the pitiful and impotent revenge of omitting him in his will, wherein, according to the generous practice of that age, he had remembered his other friends [95].

The abdication of Sylla was rather a ſuſpenſion of deſpotiſm, than a reſtoration of liberty. The ancient conſtitution was given up on all hands; and the government, with reſpect to the uſurper himſelf, become a mere derelict; a jewel careleſsly thrown way,

της κεφαλης απαγοιλος το ἱματιον· ὰ προς αλλον ὁ ῥαδιως ἱωρατο ποιων, καιπερ οἱων πολλων και αγαθων περι αὐτον. Plut. in Pomp. p. 425.—Πομπηϊος—ἐξελαμψεν και διεφανη μεγας, ὡστε Συλλαν, ὰ πρισβυτερους και ισοτιμους ὁ παυ πολλακις παρειχετο, ὑπεξαιρεισθαι προσιοντος αυτω, και κεφαλην αποκαλυπτεσθαι, και προσειπειν αὐτοκραϊορα. Plut. in Craſſ. p. 255.

[92] Πομπηϊον δε θαυμαζων δι' αρετην, και μεγα νομιζων οφελος ειναι τοις ἑαυτου πραγμασιν, ισπουδασεν αμωσγεπως οικειοτητι προσθεσθαι. συμβαινοντος δε της γυναικος αυτω της Μετελλης, πεισθηναι τον Πομπηϊον απαλλαγεῖσα της Αντιγιας, λαβειν γυναικα την Συλλα προγονον Αιμιλιαν, εκ Μετελλης και Σκαυρου γεγενημενην, ανδρι δε συνοικουσαν ηδη, και κυουσαν τοτε. ην δ' τυραννικα τω γαμω, και τοις Συλλα καιροις μαλλον η τω Πομπηϊου βιω πρεπουσα, της μεν Αιμιλιας αγομενης εγκυμονος παρ' ἑτερου προς αὐτον, εξελαυνομενης δε της Αντιγιας ατιμως και οικτρως, ὡτε δη και τω παιδος εναγχος εγγενομενης δια τον ανδρα. κατεσφαγη γαρ ὁ Αντιγιος εν τω βουλευτηριω, δοκων τα Συλλα πρειν δια Πομπηϊον. ἡ δε μητηρ αὐτης επιδουσα ταυτα, προεκαλω τον βιον εκουσιως. ὡστε και τουτο το παθος τη περι τον γαμον εκεινον τραγῳδια προσγενεσθαι, και μη Δια το την Αιμιλιαν ευθυς διαφθαρηναι παρα τω Πομπηϊω τικτουσαν. Plut. in Pomp, p. 426, 427.

[94] Συλλας δε πιπτοντι μεν ὁρων εις ὁσον δοξης προεισι και δυναμεως, αισχυνομενος δε κωλυειν, ἡσυχιαν ἡγει. Plut. in Pomp. p. 434.

[95] Εδηλωσε δε μαλιστα Συλλας, ὁτι προς Πομπηϊον ουκ ευμενως ειχε, ταις διαθηκαις ἁς ἐγραψεν. ἑτεροις γαρ φιλοις δωρεαν απολιπων, και τω παιδος αποδειξας ἐπιτροπους, τον Πομπηϊον ὁλως παρηλθεν. Id. ib.

without

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without any apparent deſire of reſuming it, and left to the firſt occupant. It ſhould be remembered, that Sylla, who gave the firſt deadly wound to republican freedom, had raiſed a kind of ariſtocracy over its ruin, upon a narrow and contracted plan of his own, though he reſerved the whole effective power to himſelf, ſo long as he was pleaſed to continue dictator. The fears, therefore, of the friends of liberty were ſomewhat relieved, and their hopes encouraged, by this ſtrange and unexpected event: but Pompey ſtood ready to ſeize the vacant prize, and, by the prevalence of his power, gave great umbrage, not to the ſenate alone, but to the whole commonwealth; from a well-grounded apprehenſion, that he was preparing to follow the example of his arbitrary maſter [96].

From the general turn of his diſpoſition, we are well warranted to imagine, that he would have ventured upon the experiment without much reluctance, could he have been ſure of doing it with ſafety; but bad as the times were, ſlavery was not become quite ſo familiar, as to be received, with a deſpondent indifference, from the hand of every tyrant, who had the hardineſs to attempt it. The antient conſtitutional powers of the ſtate ſtill reſided, nominally at leaſt, in the ſenate and people; and though both were much weakened by the late civil contentions, they had each vigor enough remaining to command reſpect even from their oppreſſors. The ſpirit which had ſubdued the world was to be ſubdued itſelf only by policy and caution; by temporizing with the humors of the different parties; and by ſecretly undermining the foundation, while a ſhew was made of repairing the decayed edifice.

[96] Ει τοσαυτη δε τιμη και προσδοκια του ανδρος, ομως ενην τις υποψια και δεος, ως ο προησομενου το τραλευμα, βαδιουμενου δε δι' οπλων και μοναρχιας ανικρυς επι την Συλλα πολιτειαν. Plut. in Pomp. p. 440.

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To prevent the ſuſpicions of the people, he gratified their fond and ardent wiſhes [97], by a reſtoration of the tribunitian power [98]; though the injuſtice of Sylla in deſtroying, was to be equalled only by the imprudence of Pompey in reviving, it. When once ſuppreſſed, better had it remained in a ſtate of perpetual humiliation. Every one of true diſcernment wiſely foreſaw, that, inſtead of promoting the cauſe of civil liberty or public juſtice, it would only foment ſedition, and pave the way to tyranny;—conjectures naturally ſuggeſted by the remembrance of former abuſes, which the corruptions of the preſent age were likely to aggravate. Accordingly, from this inſtant, it was engroſſed by a combination of bold and deſperate adventurers, ſome of them even of patrician families, who, to qualify themſelves for the office, were forced to debaſe their own characters, and become the adopted ſons of the moſt vile and obſcure plebeians. This was, in a ſpecial manner, the caſe of Clodius; whoſe name ſtands upon eternal record in the writings of Cicero, under every brand of infamy, with which ingenuity, inſpired by revenge, can ſtigmatize arrogance and profligacy [99].

Thus

[97] Cicero, who was no friend to this popular office, as being too great a check upon the ariſtocracy, whereof he was the profeſſed advocate, pretends to aſcribe this impatience of the people for its reſtitution, merely to the abuſes that had lately crept into the courts of juſtice; which, if true, was, of itſelf, a fair ground for their clamors; though, when accompliſhed, it does not appear to have been ever applied to that deſirable purpoſe: "Neque enim *ullam aliam ob cauſam* "populus Romanus tribunitiam poteſtatem "tanto ſtudio requiſivit: quam cum poſcebat, "verbo illam poſcere videbatur, re vera ju"dicia poſtebat." In Verr. Act. 1. 15.

[98] "Pompeius tribunitiam poteſtatem reſ"tituit, cujus Sylla imaginem ſine jure re"liquerat." Vell. Pat. 2. 30. Το τυ δημυ αξιωμα Συλλα καταβαλοντος, ηγωκει (ſc. Πομπηιος) αιτησαι και χαριζεσθαι τοις πολλοις. ὁπερ ην αληθες. ου γαρ εστιν ὁ τινες ειμαντιφορον ὁ Ρωμαιων ηρασθη δημος, και μαλλον επεθησει η την αρχην αυθις εαυτων εχειν. Plut. in Pomp. p. 441.

[99] Cicero, in his alluſion to theſe events, breaks out into the following warm reflexions: "Quis unquam tam audax, tam ini"micus nobis fuiſſet, ut cogitaret unquam "de ſtatu noſtro labefactando, niſi mucro"nem aliquem tribunitium exacuiſſet in "nos? quem cum homines ſcelerati ac "perditi, non modo ulla in domo, ſed "nulla in gente reperirent, gentes ſibi in "tenebris reipublicæ perturbandas putave"runt. Quod nobis quidem egregium, et "ad immortalitatem memoriæ gloriosum, "neminem in nos mercede ulla tribunum

"potuiſſe

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Thus did theſe baſe tools of uſurpation and oppreſſion accelerate the ruin of this illuſtrious republic, and, by corrupting the minds of the people with bribes and promiſes, keep the different orders of the ſtate at perpetual variance with each other; while both parties, under the ſpecious pretence of promoting the public good, maintained their own encroachments without decency or moderation; and were both equally cruel in the uſe of their victory[100].

Gabinian law.

The advantages accruing from this affected act of popularity were not to be neglected by one of Pompey's artful and aſpiring diſpoſition. The tribunes, having now recovered their original conſequence, devoted themſelves to his intereſt, and were ready at all times to uphold his power; not ſo much, indeed, from any principle of gratitude or affection, but from a ſelfiſh attention to the advancement of their own fortune. An occaſion ſoon offered, in which this influence was exerted to ſo great an extent, that the perſeverance of one alone prevailed againſt the oppoſition of the ſenate, though ſupported, by the joint ſtrength of the whole tribunitian body.

A. U. C. 686.

" potuiſſe reperiri, niſi cui ne eſſe quidem " licuiſſet tribuno. Sed ille quas ſtrages " edidit? eas videlicet, quas ſine ratione, " ac ſine ulla ſpe bona furor edere potuit " impunæ belluæ, multorum inflammatus " furoribus. Quamobrem in iſta quidem " re vehementer Syllam probo, qui tribunis " plebis ſuâ lege injuriæ faciendæ poteſ- " tatem ademerit, auxilii ferendi reliquerit: " Pompeiumque noſtrum cæteris rebus om- " nibus, ſemper ampliſſimis ſummiſque effero " laudibus; de tribunitia poteſtate taceo. " Nec enim reprehendere licet, nec laudare " poſſum." Cic. de LL. 3. 9.

[100] " Poſtquam Cn. Pompeio, et M. " Craſſo conſulibus tribunitia poteſtas reſti- " tuta eſt; homines adoleſcentes, ſummam " poteſtatem nacti, quibus ætas, animuſque " ferox erat, cæpere, ſenatum criminando, " plebem exagitare; dein largiendo, atque " pollicitando magis incendere; ita ipſi " clari, potenteſque fieri. Contra eos ſum- " ma ope nitebatur pleraque nobilitas; ſe- " natus ſub ſpecie, pro ſua magnitudine. " Namque, uti paucis verum abſolvam, per " illa tempora quicumque rempublicam " agitavere, honeſtis nominibus, alii, ſicuti " jura populi defenderent, pars, quo ſena- " tus auctoritas maxuma foret, Bonum Pub- " licum ſimulantes, pro ſua quiſque potentiæ " certabant: neque illis modeſtia, neque " modus contentionis erat: utrique victo- " riam crudeliter exercebant." Sall. in Bell. Catil. 34.

The

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The depredations committed by the pirates upon various parts of the Roman dominions had diſtreſſed even Rome itſelf, by intercepting the regular ſupply of proviſions. During this general conſternation, Gabinius propoſed a law, to enable the people to chuſe ſome eminent perſon of conſular dignity, who ſhould take upon himſelf the whole conduct of the war againſt thoſe public enemies of mankind. Though the tribune cautiouſly ſuppreſſed the name, yet the marks of diſtinction, by which he pointed out the particular object of his meaning, were too ſignificant to be miſtaken [101]. The multitude immediately caſt their eyes upon Pompey [102]; and inveſted him with a command of ſo unlimited a nature, that inſtead of admiral in the preſent expedition, he became, in effect, a monarch over the whole empire [103].

The ſenate, alarmed at this dangerous inſtance of popular madneſs, would much rather have ſubmitted to the inſolence of the pirates, than to a power ſo extenſive and indeterminate [104]. All the members therefore, Cæſar alone excepted, ſtrenuouſly united againſt the law [105]; and ſo violently were they exaſperated at the obſtinacy of Gabinius, that they had well nigh made him a ſevere example of their vengeance upon the ſpot [106]. But the capricious po-

[101] Αυλος τις Γαουΐνιος δημαρχος γνωμην εδωκεν, (ητ' ουν του Πομπηΐου καθιλοις αὐλον, ειτε και αλλως χαρισασθαι οι βουλομενος. ου γαρ πω και υπ' ευνοιας αὐλο της του κοινου εποιησε· καπειτος γαρ αυτῃ ην) γραπτην ινα αὐλοκρατορα εφ' απασας αὐλους εκ των υπατευκοτων ελεσθαι, τρισι τε ετεσι αρξοντα, και δυναμει παμμεγεθει μετ' υποστρατηγων πολλων χρησομενον. αὐλικρος μεν γαρ το του Πομπηΐου ονομα ουκ ειπε· ευδηλον δε ην, ὁτι αν απαξ τι τοιουτον ὁ δημος ακουσῃ, εκεινον αἱρησεται. Dio Caſſ. 36. 6.

[102] Και ισχυ αὐλω· την τε γαρ ισηγησιν αυτου επιδεξαλο, και προς τον Πομπηΐον παραχρημα παντες, πλην της γερουσιας, απεκλιναν. Id. 36. 7.

[103] Εγραψε Γαβινιος ὁς των Πομπηΐου συνηθων νομον, η ναυαρχιαν, αὐλικρις δε μοναρχιαν αυτῳ διδοτα, και δυναμιν επι πασας ανθρωπους ασυνθυνον. Plut. in Pomp. p. 446.

[104] Αυτη γαρ (ſc. γερουσια) πασι ὁτιουν υπο των ληστων παθειν μαλλον, η εκεινῳ τοσαυτην ἡγεμονιαν εγχειρισαι, ἡρειτο. Dio Caſſ. 36. 7.

[105] Αναγνωσθεντων δε τουτων, ὁ μεν δημος ὑπερφυως εδεξατο, της δε συγκλητου τοις μεγιστοις και δυνατωτατοις εδοξε μειζον μεν φθονον, φοβον δε αξιον ειναι το της εξουσιας απεριληπτον και αοριστον. ὁθεν επιταλο τῳ νομῳ πλην Καισαρος· ὁυτος δε συνηγορει τῳ νομῳ, Πομπηΐῳ μεν ελαχιστα φρυττιζων, υποδυομενος δε τον δημον εξ αρχης ἑαυτῳ και κωμωδος. Plut. in Pomp. p. 446.

[106] Ολιγου και απεκλεισαν τον Γαουΐνιον εν αὐλῃ τῃ συνεδριῳ. Dio Caſſ. 36. 7.

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pulace, ever ready to run headlong to their own deſtruction, warmly ſeconded the propoſal of the tribune; and were ſo clamorous in its ſupport, that even the oppoſition of nine, and the interceſſion of two others, of the ſame body, were utterly ineffectual [107]. Pompey, in the mean while, with a diſſimulation which always made a ſtriking part of his political character, affected a total indifference; and though earneſtly deſirous of the honor, wiſhed to appear to have it forced upon him by the ſolicitations of the people [108].

Manilian law. A. U. C. 687.

The grant of this favor ſerved only as a precedent for the demand of a ſecond. Hardly were the pirates ſubdued, when the tribune Manilius, another venal miniſter of uſurpation, propoſed a law to confer upon Pompey the management of the war againſt Mithridates [109], with ſtill greater powers than had ever yet been granted on the like occaſions, and that put the whole empire entirely into his hands [110]; from whence, as the hiſtorian conjectures, he acquired the title by which he was, from thence-forward, diſtinguiſhed [111]. This repeated effort of tribunitian audacity rouſed the ſpirits

[107] Τους δε δημαρχους τους αφεσιν αυτησαν εκκοπτεσθαι τω Γαουϊνῳ. και αυτων οι μεν αλλοι φοβηθεντες το πληθος, ουδεν αντειπον· Λουκιος δε δη τις Τριβελλιος, και Λουκιος Ῥωσκιος, ετολμησαν μεν, ουκ ηδυνηθησαν δε ουτ' ειπειν τι ων υπεσχηντο, ουτε πραξαι. Dio Caſſ. 36. 7.

[108] Ὁ Πομπηϊος, επιθυμων μεν παυ αρξαι, και ηδη γε υπο τε της ιδιας φιλοτιμιας, και υπο της του δημου σπουδης, ουδε τιμην ετι τουτο, αλλα ατιμιαν, το μη τυχειν αυτου, νομιζων ειναι, την δε αιτησιν των δυνατων ορων, βουλεσθαι δοκειν αναγκαζεσθαι. ων μεν γαρ και αλλως ως ικανα προσποιουμενος επιθυμειν ουκ ηθελε· τοτε δε και μαλλον, δια τε τα επιφθονα, αν γε ικων της αρχης αφικοιτο, και δια τουτο το ευκλεες, αν γε και ακων, ως γε και εξαναγκαζομενος ων, αποδειχθη, επλασσετο. Id. ib.

[109] "Manilius tribunus plebis ſemper "venalis et alienæ miniſter potentiæ, legem "tulit, ut bellum Mithridaticum per Cn. "Pompeium adminiſtraretur." Vell. Pat. 2. 33.

[110] Γραφει γαρ εις τον δημαρχον Μαλλιον — Πομπηϊον παραδιδοντα πασαν — πολεμειν Μιθριδατῃ και Τιγρανῃ τους βασιλευσιν, εχοντα και τον ναυτικον δυναμιν, και το κρατος της θαλασσης, εφ' οις ελαβεν εξ αρχης. τουτο δε ου εφ' ῳ συλλυθειν γινεσθαι την Ῥωμαιων ηγεμονιαν. Plut. in Pomp. p. 451. Dio Caſſ. 36. 25.

[111] Οι Ῥωμαιοι, των Πομπηϊον μεγα επαιροντες, ετι αλλα περι Κιλικιαν, ειλοντο τω περος Μιθριδατην πολεμου γραφηναι, επι της ομοιας εξουσιας αυτοκρατορα οντα, ὡστε θαλασσοκρατειν τε και πολεμειν, και φιλους η πολεμιους Ῥωμαιοις ους δοκιμασαι ποιεισθαι, κρατειν τε πασης ὁσην φερει της Ιταλιης, αρχην ιδιαν· απερ ουδεν αν φαιλοτερα προ τουδε ὁμου φαινα ειδη· και ως γε παντα και δια τουδε

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ſpirits of the ariſtocratical party to the higheſt pitch of indignation; but it was too late to think of reſiſtance. Without regarding the conſequences, the common people, bewitched by the eloquence of Cæſar and Cicero, gave their unanimous vote for the law [113], which may be well ſaid to have laid the axe to the root of the conſtitution.

The motives of Cæſar were to make ſure of the voice of the the people, which he foreſaw muſt prevail over that of the ſenate; to prepare the way for future conceſſions of the like nature in his own favor; and by ſuch a preſent accumulation of honors, to render Pompey an object of univerſal envy [114]. The views of Cicero were ſtill more diſgraceful, and unbecoming the dignity of a great ſtateſman. Determined, at all events, to have his ſhare in the adminiſtration, he endeavoured to impreſs upon each party an idea of his own conſequence; inclining alternately to that which happened to be moſt predominant, and attaching himſelf, at one time, to the higheſt and moſt reſpectable men in the ſtate; at another, condeſcending to flatter the refuſe of the common people [115].

The preceeding anecdotes, for which we are indebted to a very faithful hiſtorian, may chance to carry with them an air of calumny; eſpecially when compared with the profeſſions of Cicero himſelf, in his famous oration for the *Manilian Law*. In this elegant com-

ταλι Μεγαν χρεστηγον ονομαζουσι. App. in Bell. Mithrid. p. 238.

[113] Ὁ δε ὁμιλος ——— ἁπας εφαρπασας αυτα, απαγοιαν οφας ες τα μαλιστα του τε Καισαρος και τα Κικερωνος τα Μαρκου. Dio Caſſ. 36. 26.

[114] Κικερων μεν τοι τα οχλου αιμα ωθεμενους, ὡτι και ὁρων ὡσα τας βουλας επικρατουντα τοτε, και ἑαυτην το τι των ὁμοιων ψηφισθησαι θελι παρεσκευαστο. κον τουλω και τον Πομπηιον και επιφθονωτερον και επιχθιστον τα των ὁλιγων δι αιτιαν ἑαυτης οφιν ποιουμενος ὁπως ποτε τον δημον ὑπερ τον θειον γενηται, ηθελησε. Id. ib.

[115] Κικερων δι την τε πολιτειαν αγειν ἀξιου, και επιθυμητης και τη αληθει και τοις δικαιοις, ὁτι ὑπερτερους αι σφων προσθηται, παντως αιτιους επαυξησει. επιφοτιζε τι γαρ, και τοις μεν τα τουλων, ες δ' ὁτι και τα εκεινων, ἱν' υπ' αμφοτερων σπουδαζηται, περιειπεν. τους γουν βελτιους πρωτους προσαρισθαι λεγων, και δια τουτο και προαγορευομενος μαλλον η δημαρχησαι ἡθελησε, τοτε προς τους συμφερουσης μαλλον. Id. ib.

position,

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poſition, the "divine and incredible virtues"[115]" of this preſent idol of his luxuriant imagination, are diſplayed in ſuch glowing raptures of rhetorical enthuſiaſm, and his own ſincerity aſſerted with ſuch ſolemn proteſtations and appeals to heaven; that, from the juſt eſteem in which poſterity has ever held his ſublime genius, we can hardly refrain from giving him credit upon his bare word, that he had no view to any perſonal advantage from the friendſhip of the great man, whoſe praiſes he was then celebrating; but that he recommended him to the favor of the people, from a ſenſe only of his being the moſt capable of extricating his country from its preſent difficulties"[116]. Such, however, as are converſant with his writings, particularly his epiſtles, in which he ſpeaks the more free and unreſerved ſentiments of his heart, will find them abounding with a variety of contradictions, not only to his public profeſſions, but to the whole tenor of his actions. General experience will likewiſe convince us, that there is no line of political conduct ſo abſurd or inconſiſtent, which the vanity and preſumption of thoſe, who make a trade of oratory, will not adopt, when inſtigated by the hopes of honor, profit, or applauſe.

When Pompey, who was then abſent from Rome, received the news of this freſh proof of epidemical folly, he ſhewed every poſſible ſymptom of diſſatisfaction; pretending to lament his cruel fate, which expoſed him to a life of ceaſeleſs danger and

[115] "Divina atque incredibilis virtus imperatoris:" and ſoon after, "Summa enim omnia ſunt, Quirites; ſed ea magis ex aliorum contentione, quam ipſa per ſeſe cognoſci atque intelligi poſſunt." Cic. pro Leg. Manil. 13.

[116] "Teſtor omnes Deos, et eos maxime, qui huic loco temploque præſident, qui omnium mentes eorum, qui ad rempublicam adeunt, maxime perſpiciunt, me hoc neque rogatu facere cujuſquam, neque quo Cn. Pompeii gratiam mihi per hanc cauſam conciliari putem, neque quo mihi ex cujuſquam amplitudine, aut præſidia periculis, aut adjumenta honoribus quæram: propterea quod pericula facile, ut hominem præſtare oportet, innocentia tecti pellemus: honorem autem neque ab uno, neque ex hoc loco, ſed eadem noſtra illa laborioſiſſima ratione vitæ, ſi veſtra voluntas feret, conſequemur. Id. ib. 24.

fatigue;

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fatigue; and deprived him of thoſe domeſtic comforts which the meaneſt plebeian enjoyed in a much higher degree of tranquillity and perfection than himſelf. By theſe grimaces, however, he ſo over-acted the part, that his beſt friends, well convinced how much his heart was ſet both upon power and revenge, were ſcandalized at his hypocriſy[117].

Such were the firſt fruits of the revival of the tribuneſhip, which, in the beſt of times, was liable to be perverted to many bad purpoſes; in the worſt, could be applied to none that were beneficial. The two laws, therefore, lately under contemplation, may paſs for very memorable events in the political hiſtory of Rome; both as they clearly develope the real deſigns of this enterprizing commander; and as they introduced a fatal precedent, of which the future pretenders to ſupreme rule availed themſelves with much leſs ceremony; till, having ſo frequently obtained it almoſt as a matter of courſe, they laid claim to it, in the end, as a matter of right.

It was probably owing to the anti-conſtitutional exerciſe, and ſhameful abuſe of this important office, that Cato, an inflexible republican, and determined enemy of the uſurpations of Pompey[118], withſtood the earneſt importunities of his friends to offer himſelf a candidate for it; thinking that ſo great a power, like a potent medicine, ſhould only be employed in caſes of the utmoſt extremity[119]. But when Metellus Nepos, a furious zealot of the Pompeian faction, threatened further innovations and diſturbances A. U. C. 691.

[117] Αὐλος δι δεξαμενος τα γραμματα, και συθεμενος τα διδυγμενα, των φιλων παροντων και συνηδομενων, τας οφρυς λαγιζαι συναγαγων, και τον μετωπον παλαξαι, και ειπειν, ὡς αι βαρυνομενος ηδη και δυσχεραινων το αρχειν, θεν των αστυλων αθλων, ὡς αρα κρειττον ην ἑνα των ἀδοξων γενεσθαι, ει μηδεποτε παυσομαι τραλευομενος, μηδ' τον φθονον τυτον εκδυς, εν αγρῳ διαιτησομαι μετα γυναικος. ἐφ' ὁις λεγομενοις, ευθ' οι παν συνηθεις ἐφιρον αυτε την ειρωνειαν, γινωσκοντες ὁτι της εμφυτε φιλοτιμιας και φιλαρχιας ἐπικρυμμα την προς Λευκυλλον ἐχων διαφορα, μιζονας ἐχαιρεν. Plut. in Pomp. p. 452.

[118] Ὁι περι Πομπηϊον, ὁρωντες αὐλον (ſc. Καλωνα) ἐν ὁις ισπυδαζον αδικως, αμεταπειτον και δυσκολιαν αει, διεμηχανωντο φιλικαις τισι συνηγοριαις, η διαιταις, η πραγματειαις ἐξω περισπαν. Plut. in Cat. Min. p. 233.

[119] Πολλων δι αὐλον επι δημαρχιαν καλυντων, ουκ ἠθελε καλως ἐχειν μεγαλης ἐξυσιας και ἀρχης, ὡσπερ ισχυρῳ φαρμακῳ δυναμει ἐν πραγμασιν ουκ αναγκαιοις ἐξαναλωσαι. Id. p. 234.

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in the commonwealth, this honeſt patriot immediately renounced the enjoyment of his rural and philoſophical retirement, and declared himſelf a competitor; in hopes, by his interceſſion, of preventing the impending evil, though it might be out of his power to do any actual good [120]. Thus was this once ſacred and reſpectable office proſtituted to the moſt miſchievous deſigns of the treacherous ſons of faction: and though even Pompey did not bluſh to encourage their arrogance, and to ſtrengthen himſelf by their influence; yet when he found it once levelled againſt his own authority, he ſoon repented of the active part he had taken in promoting its reſtoration [121].

Growth of the ariſtocracy.

Though Pompey had gained the affection of the common people, by the repeal of this, as well as of ſome other unpopular laws of Sylla, yet he generally paſſed for one of the main pillars of the ariſtocratical cauſe. Cicero, the voice of that party, in ſeveral paſſages of his works, ſpeaks of him as *their own* [122]; as if they had an excluſive property in his friendſhip and protection: and, to ſay the truth, his eminent accompliſhments rendered him a worthy object of their eſteem, ſo long as they kept themſelves beyond the reach of his ambition. During his abſence, on the occaſion of the Mithridatic war, Rome beheld only the luſtre of his glory, without being terrified by his power. The ſenate exerciſed their authority independent of any ſuperior; while Cicero directed their meaſures, and

A. U. C. 690.

[120] The account given by Plutarch is, that Cato, on a journey into the country, meeting the retinue of Metellus, who was going to Rome to ſtand for the tribuneſhip, immediately ordered his own to return back; and upon his friends expreſſing their wonder, he replied: Ουκ ισι, ὁτι καθ' ἁυλον ὑπο εμπληξιας φοβειρος ἐστι Μετελλος· και τυν εκ της Πομπηϊου γνωμης αφιγμενος, εις την πολιτειαν εμπισειται δικην σκηπθι, πανλα τραγμαλα ταρατθων; ουκουν σχολης ὑδε αποδημιας καιρος, αλλα δει κρατησαι τυ ανδρος, ἡ καλως αποθανειν ὑπερ της ελευθειριας αγωνιζομενον.—ενθυς ἐωθεν εις αγορην καταβαινει δημαρχιαν μελλων, ὡς ανθιταξομενος προς τον Μετελλον. το γαρ ισχυρον, ἡ αρχη προς το κωλυειν ἐχει μαλλον ἡ προς το πρατθειν· και πανλες ὁι λοιποι παρ' ἐνα ψηφισωνται, τυ μη θελοντος μηδε ἑνος το κρατος ἐστιν. Plut. in Cat. Min. p. 235.

[121] Thus when Curio the tribune, a friend of Cæſar, by ſuddenly diſſolving the ſenate, had diſappointed ſome views of Pompey, the hiſtorian adds, Ὁτι δη και μαλιστα τῳ Πομπηϊῳ μετεμελησε, την δημαρχιαν, ες ασθενεστατον ὑπο Συλλα καθηρημενην, ανηγαγοντι ανθις επι το αρχαιον. App. de Bell. Civ. p. 445.

[122] "Pompeium *noſtrum*."

animated

animated their councils. This was the period in which the ariſtocratical power ſeems to have been in its moſt flouriſhing ſtate; and to have exerted itſelf with the leaſt reſtraint, it had ever felt ſince its inſtitution by Sylla [123].

The luxury, debauchery, and venality of Rome in thoſe ages, were a diſgrace to civil ſociety, and the juſt ſubjects of invective for every writer, who dared to expreſs the honeſt ſentiments of his heart. They had now taken ſuch faſt hold of every part of the community, as to become wholly incurable; and were therefore a proper baſis for a tyrant, whereon to erect a corrupt and oppreſſive government. The particular inſtances of theſe melancholy truths are too well known to need a repetition [124]. Suffice it to obſerve, that theſe were among the principal cauſes that led to the final ruin both of law and liberty; earneſtly wiſhing, at the ſame time, to impreſs this tremendous example upon the minds of thoſe, who are now treading the ſame perilous and deceitful ground; as they may be well aſſured, that ſimilar cauſes will generally produce ſimilar effects.

Character and conduct of Cicero.

That the immortal Cicero himſelf ſhould have been a zealous advocate for a plan of policy, ſo adverſe to the moſt valuable rights of his fellow-citizens; that he who had been nurſed in the arms of philoſophy, who ſo perfectly underſtood the relative duties of mankind, and bore the language of liberty for ever upon his tongue, ſhould have been the abettor of the moſt deteſtable tyrant, that was ever ſuffered by Providence to chaſtiſe a ſinful nation; are reflexions highly degrading to human nature; and the facts from whence

[123] "Poſtquam Cn. Pompeius ad bellum "maritimum atque Mithridaticum miſſus "eſt; plebis opes imminutæ; paucorum, "potentia crevit. Hi magiſtratus, provincias, "aliaque omnia tenere. Ipſi innoxii, flo- "rentes, ſine metu ætatem agere, ceteroſ- "que judiciis terrere, quo plebem in magi- "ſtratu placidius tractarent." Sall. de Bell. Cat. 35.

[124] They are ſummed up together, in very warm and pathetic language, by Sall. de Bell. Cat. 6—9.

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they ariſe would be ſcarcely credible, were they not fully eſtabliſhed upon the faith of unconfuted hiſtory.

This attachment of Cicero to the cauſe of Sylla ſeems to have been rooted in his mind by an early habit: for, juſtly apprehending that the licentiouſneſs and cruelty of the Marian faction would end in lawleſs deſpotiſm, he retired, when but a youth, from the buſy ſcene of public life, to the ſociety of perſons diſtinguiſhed for their virtue and learning; and did not return to Rome till Sylla was in full poſſeſſion of power; conſidering that event, as a reſtoration of the government to a ſtate of tranquillity[125]. Sometimes, indeed, he paid himſelf the compliment of having dared to oppoſe his arbitrary meaſures, particularly in the caſe of Roſcius Amerinus, and of having thereby incurred his diſpleaſure; yet it is certain that, in general, he was not only a friend to him while living, but that many years after his death, he juſtified the adminiſtration of Sylla, even from the conſular chair; and took great pains to perſuade the people, that the alterations introduced by him were for the public benefit[126]. But the eminent qualities of this illuſtrious orator were too much tinctured both by vanity and cowardice: blemiſhes, which gave a very unpleaſing effect to his character; and leſſened the beauty of thoſe actions, that, in appearance, were the moſt commendable. With the moſt paſſionate profeſſions of love to his country, he voted honors and rewards to thoſe, who, he well knew, were endeavouring to enſlave it: he flattered and cheriſhed the ambition of Pompey, whoſe power he feared; and publicly extolled the virtues of Cæſar, as well as

[125] Ὁρων εις γαμον, εκ δε τουτου γαμους εις ακρατον εμπιπλοιμενα τα πραγματα μοναρχιαν, επι τον σχολαζειν και θεωρητικον ηλθεν βιον, Ἑλλησι συνην φιλολογοις, και προσειχε τοις μαθημασιν· αχρις ὁ Συλλας ικρατησε, και καταστασιν τινα λαμβανειν εδοξεν ἡ πολις. Plut. in Cic. p. 442.

[126] Της ὑπο Συλλα γενομενης μεταβολης περι την πολιτειαν, ὡ αρχη μεν ατοπω φανεισης, τοτε δε τοις πολλοις ὑπο χρονου και συνηθειας ἡδη τινα καταστασιν ισχυν ὡ φαυλην δοκουσης, ησαν οἱ τα παροντα διαστασαι και μεταθεναι ζητουντες, ιδιαν ενεκα πολιτειαν, ὡ προς το βελτιστον. Id. p. 450.

solicited

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ſolicited his favor, though he ſecretly envied his glory, abuſed his government, and ridiculed his failings. It is not likely that ſuch duplicity could have entirely eſcaped the penetration of theſe two great and ſubtle politicians; for, though he was occaſionally careſſed by both for the ſake of his oratory, he does not appear to have ever acquired the real eſteem of either.

Behaviour in his conſulſhip.

But, to take him in the moſt advantageous point of view, we ſhould advert to his conſulſhip; in which, by his prudence and vigilance, he defeated the treaſonable attempts of Catiline, and his flagitious crew; and by ſuch ſignal and ſubſtantial ſervices acquired the enviable title of Father of his Country [127]. Had, therefore, his life expired with his magiſtracy, he would have gone to the grave with honor, and have merited a funeral at the public expence; though even the glory of having reſcued the ſtate from this moſt dangerous conſpiracy was, in ſome meaſure, obſcured by the gaudy tinſel of ſelf-applauſe [128]. It is true, likewiſe, that the ſudden and ſevere puniſhment inflicted upon the traitors, gave an alarm to the friends of liberty, as being contrary to the ordinary courſe of juſtice in criminal caſes, and depriving the ſufferers of their legal appeal; while the people, eſpecially the younger part of them, attended the ceremony in awful ſilence, as if going to be initiated into ſome dreadful myſteries of ariſtocratical tyranny [129]. This was afterwards made a ground of accuſation againſt Cicero by the Clodian faction, for having taken away the lives of citizens without the

[127] Ωτι τιμης αυτω των πωποτε μεγιστας ψηφισασθαι, και προσαγορευσαι πατερα πατριδος. Plut. in Cic. p. 464. Κατωνος δ' αυτον και πατερα της πατριδος προσαγορευσαντος, επεβοησεν ὁ δημος. App. de Bell. Civ. p. 431.

[128] Και μεχρι μεν ισχυσεν ἡ τη πολει τοτε, πολλοις δ' επηρθωσεν ἑαυτον εποιησεν απ' ὑβρεως ισχυ πονηρᾳ, τῳ δ' εταιρειᾳ αιει και μεγαλυνειν αυτος ἑαυτον ὑπο πολλων δυσχεραινομενος. ὁτι γαρ βουλη, ὁτι δημος, ὁτι δικαστηριον ἡ συνελθοι, εν ᾧ μη Κατιλινα εδει θριαμβευειν ακουσαι και Λιτυλλαν. αλλα και τα βιβλια τελευτηι κατεγλωσε και τα συγγραμματα των εγκωμιων. και τον λογον ὑδεν οἱα και χαιρειν ἰσχυλα φλυειν, επαχθη και φθονερον εποιησε τοις ακουουσιν, ὡστε τινος μει κυρος αυτῳ της ανδρος τουτης προσοντος. Plut. in Cic. p. 465.

[129] Τῳ δημῳ φοβερος τα δεινα, και παρεσος σωσαι· μαλιστα δε των νεων, ὁσοις ἱερος ἡν πατριος αριστοκρατικης τινος ἐξουσιας, τελεισθαι μετα φοβου και δακρυων δοκουντες. Id. p. 462.

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uſual forms required by law; though it was juſtified even by Cato himſelf[130], as a neceſſary act of ſelf-preſervation; and oppoſed only by the moſt profligate ſenators, who dreaded a precedent, which they were conſcious might be deſervedly converted againſt themſelves.

The reputation acquired by Pompey in the Mithridatic war, and the extravagant honors conferred upon him at Rome, had ſo magnified his importance, that, on his arrival in Italy, the general apprehenſion was, that he meant to ſeize the ſovereign power into his own hands[131]. But, to the agreeable ſurprize of the trembling city, he immediately diſbanded his army, contenting himſelf with the applauſes of the people; and expecting that the growing diſorders of the ſtate would ſoon oblige them to run into his arms, and perhaps even to create him dictator, without his appearing to affect any ſuch high compliment. He therefore prudently lay by for the preſent, endeavouring to keep fair with both parties, though, from his over-ſtrained caution, he gained the love of neither; but took care to pay a particular attention to Cicero, in hopes, through his means, of pacifying the reſentment of the ariſtocratical party, who were, at this time, his profeſſed enemies.

The influence of this artful and inſidious orator was almoſt abſolute over the members of the ſenate, whoſe dignity he openly maintained, and whoſe ſelf-conſequence he flattered, with all the powers

[130] His oration is preſerved at length by Sall. de Bell. Cat. 47, and the general ſubſtance of it by Plut. in Cat. Min. p. 238. who mentions it as the only one that was ever extant of Cato; owing to the care of Cicero, who employed certain clerks to take it down in ſhort-hand. As this invention, ſo uſeful to practitioners in law, ſeems to have owed its origin to this memorable occaſion, it may be ſome ſatisfaction to the reader to take a view of the paſſage at length; though it bears but little relation to the main ſubject of the preſent work. Τουτοις μονον ὡν Κατων ειπειν διασωζεσθαι φασι τον λογον, Κικερωνος τω υπατω της διαφερουσας οξυτητι των γραφειων σημεια προδιδαξαντος, ἐν μικροις και βραχυσι τυποις πολλων γραμματων ἐχοντα δυναμιν, εἰτα ἀλλοις ἀλλαχοσι τω βουλευτηριω σποραδην ἐμβαλοντος. ουτω γαρ ησκουν, ουδ' ἐκεκτητο τους καλουμενους σημειογραφους, ἀλλα τοτε πρωτον εις ἰσχυς τι καταστηναι λεγουσιν. Id. ibi.

[131] Λογοι δε παιδοδαποι περι του Πομπηιου προκατειπειν εις την Ῥωμην και θορυβος ην πολυς, ὡς ευθυς ἀξοντος ἐπι την πολιν το στρατευμα, και μοναρχιας βεβαιας ἐσομενης. Plut. in Pomp. p. 468.

of

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of his unbounded eloquence; while he repreſented them, to his private correſpondents, in their truer light, as the moſt voluptuous, inſignificant, and deſpicable herd[131], that ever preſumed to ſet themſelves up for politicians and rulers. From theſe cenſures, indeed, he excepts Cato; though he charges even him with doing injury to the public cauſe, by the ſevere maxims of his ſingular philoſophy, which were calculated only for the republic of Plato, not for the corrupt and degenerate ſons of Romulus[132]. The truth was, that, having a ſovereign contempt for almoſt the whole ſenate, he received and encouraged the advances made him by Pompey, in order to ſhelter himſelf from the ſtorm which he ſaw impending over him. Behind his back, however, he treated him with as little ceremony or candor, as he did the reſt of his collegues; and though he had almoſt deified him on the occaſion of the Manilian law, he made no ſcruple of reflecting on him in private, as having nothing in his ſentiments either liberal or elevated; nothing that was not groveling and vulgar[134]. Such is the diſingenuous light in which this famous orator appears, when compared with himſelf in the ſenate and the cloſet;

[131] In his letters to Atticus he ſpeaks of them as wholly devoted to gluttony and luxury, and unfit for any other buſineſs; "Noſtri *principes*," by which he means the majority of thoſe eminent characters, who took the lead in the ſenate, "digito ſe cœlum putant attingere, ſi mulli barbati in piſcinis ſint, qui "ad manum accedant, alia autem negligunt." Ad Att. 2. 1. In another, he ſays, "Illud tamen velim exiſtimes, me "hanc viam optimatium poſt Catuli mortem "nec præſidio ullo, nec comitatu tenere. "Nam, ut ait Rhinton, ut opinor,

Οἱ μὲν πολλοὶ οὐδὲν ἴσασι, οἱ δὲ κακοὶ μάλιστα.

and then he calls them "piſcinarii noſtri." Ad Att. 1. 20. Cato rebukes them after the ſame manner, in his ſpeech againſt the conſpirators; "Vos ego appello, qui ſemper domos, "villas, ſigna, tabulas veſtras, pluris quam "rempublicam feciſtis." Sall. de Bell. Cat. 47.

[132] "Catonem noſtrum non tu amas plus, "quam ego. Sed tamen ille, optimo animo utens, et ſumma fide, nocet interdum "reipublicæ. Dicit enim tanquam in Platonis πολιτείᾳ, non tanquam in Romuli "fæce, ſententiam." Ad Att. 2. 1.

[134] Thus, addreſſing himſelf to Atticus, "Is (ſc. Pompeius),—nihil habet amplum, nihil excelſum, nihil non ſummiſſum, atque populare. Veruntamen "fuit ratio mihi fortaſſe ad tranquillitatem "meorum temporum non inutilis; ſed "mehercule reipublicæ multo etiam utilior, "quam mihi, civium improborum impetus "in me reprimi, cum hominis ampliſſima "fortuna,

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cloſet; who, with the utmoſt indifference, ſacrificed ſincerity to intereſt, and courted fame at the expence of truth[135].

Though Pompey, as yet, affected great moderation, his ambition was never at reſt; but he was conſtantly ſtriving to corrupt the minds of the electors by bribery, in order to force his own minions into the firſt offices of the ſtate[136]. Having, by this, and ſuch other repeated abuſes of power, given very general offence, he was obliged to throw himſelf upon the tribunes; and to demean his character, by condeſcending to become a companion of youth and debauchery. In this diſgraceful ſtate was he embraced by Clodius[137], whoſe vices were of that enormous magnitude, as to make him a ſcandal even to the abandoned and libertine age in which he lived; and whoſe countenance rendered Pompey himſelf ſtill more odious to all perſons of virtue and ſobriety.

About this time Cæſar returned from his government in Spain, where he had acquired more ſolid honors by his juſtice and humanity, than by his victories[138]. His many liberal and amiable qualities had placed him high in the eſteem of his country when very young; and created an early ſuſpicion, that he would, in time,

" fortuna, auctoritate, gratia fluctuantem " ſententiam confirmaſſem, et a ſpe malo- " rum ad mearum rerum laudem convertiſ- " ſem." Ad Att. 1. 20.

[135] For the propriety of theſe obſervations the reader is referred to his Epiſtles, which not only contain declarations oppoſite to his public conduct, but often ſhew him in direct contradiction to himſelf. The whole of this ſubject is likewiſe diſcuſſed with great accuracy by Mr. Hooke, in his hiſtory of theſe times.

[136] Βουλομενος ὑπαλλον αποδειξαι Πομπηϊος Αφρανιον, αργυριον εις τας φυλας ανηλισκεν ὑπερ αυτου, και τουτο κατιουσης εις τους Πομπηϊου κηπους ελαμβανον. Plut. in Pomp. p. 469. His *friend* Cicero likewiſe, in ſpeaking of the ſame event, obſerves, " Nunc eſt expectatio comi- " tiorum: in qua omnibus invitis trudit " noſter Magnus Auli filium: atque in eo " neque auctoritate, neque gratia pugnat, " ſed quibus Philippus omnia caſtella " expugnari poſſe dicebat, in quæ modo " aſellus onuſtus auro poſſet aſcendere." Ad Att. 1. 16.

[137] Εκπινδων και περιωδημενος ὁ Πομπηϊος, παγκαλεστο δημαρχουσι προσφευγειν και προσαρτασθαι μειρακιοις. ὡν ὁ βδελυρωταλος και θρασυτατος Κλωδιος αναλαβων αυτον υπεξεφηκε τη δημῳ. Plut. in Pomp. p. 472.

[138] Θιμιστος δε τα του πολεμου καλως, η χειρον εβραβευσε τα της ειρηνης, ὁμοιαν του ταις πολλαις καδιγας, και μαλιστα τας των χριωφιλετων και δανειστων ωμοτητος διαφορας. Plut. in Cæſ. p. 112.

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be at the head of the government, with the univerſal conſent of the people [139].

Firſt Triumvirate. A. U. C. 694.

Being now much increaſed both in reputation and conſequence, he attracted the general notice of the public. Pompey therefore, who had been long ſailing upon the ſame troubled ſea of ambition, dreading, perhaps, the effects of his popularity, found it prudent to admit him into an alliance, in which Craſſus was likewiſe included; and thus was formed the famous triple league, ſo well known by the name of the *Firſt Triumvirate* [140]. The only common principle, by which theſe great men were united, was the love of power: this equally predominated in them all; though their perſonal characters and diſpoſitions were extremely different. Each likewiſe had his ſeparate claſs of adherents; Pompey, the more ſteady and conſiderate; Cæſar, the more impetuous and enterprizing; while thoſe who warily ſteered between both, put themſelves under the patronage of Craſſus [141]. This connexion, however, gave another incurable wound to the commonwealth [142], or rather to the ariſtocracy [143], the former being already ruined by the tyranny of Sylla.

This triumvirate was an entirely new phenomenon, not reducible to any particular ſpecies of government that had ever yet exiſted in the Roman conſtitution; nor ſubject to any rules, except ſuch as were ſettled by private compact between themſelves. Uſurpation indeed it certainly was; but ſtill more tolerable than the general.

[139] Παυλων ικουλι τω δημω περιεισθαι και πρωτευειν. Id. ib. p. 106.

[140] Ουτω μεν δη, και δια ταυτα οι τριες την τε φιλιαν συνεθεντο, και ορκους αυλη περιωσαμενοι, τα τε κοινα δι' ικεινων επρησσειο. Dio Caſſ. 37. 57.

[141] Η μεν εμφρων και καθεστωσα μοιρις εν τη πολει Πομπηϊον εθεραπευε· το δ' οξυ και φερομενον μετ' ισχυριας, ταις Καισαρος ελπισιν επηκολουθει. Κρασσος δε μεσος ων, αμφοτεραις, εχρητο. Plut. in Craſſ. p. 257.

[142] Theſe were the ſentiments of Cato; Ο γαρ Κατων τους λεγομενους υπο της υστερον γενομενης προς Καισαρα Πομπηϊου διαφορας αναπραπηναι την πολιν, αμαρτανειν ελεγεν, αιτιωμενους το τελευταιον· ου γαρ την αρχην υπ' εκεινων εχθραν, αλλα την συναρσιν και την ομοιοταν αυτων τη πολει πρωτον κακον γενεσθαι και μεγιστον. Plut. in Pomp. p. 473. & in Cat. p. 248.

[143] Ου γαρ, ως οι πλειστοι νομιζουσιν, η Καισαρος και Πομπηϊου διαφορα τους εμφυλιους απειργασατο πολεμους, αλλα μαλλον η φιλια, συναιρων επι καταλυσει της αριστοκρατιας το πρωτον, ειτα υστερον και προς αλληλους διαστασαν. Plut. in Cæſ. p. 113.

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general ſtate of corruption and anarchy, which had grown out of the diſſenſions and cabals of the nobles. It leſſened the number of tyrants, and devolved the power into the hands of three of the chief perſonages of the times; men of approved valour, conſummate abilities, and adorned even with many virtues.

A. U. C. 694.

Cæſar, being now elected one of the conſuls, entered upon his office with a reſolution to engage the affections of the people by every act of condeſcenſion in his power; and to prevent the nobles from declaring themſelves his enemies, in conſequence of this ſeeming partiality to their rivals, gave them an aſſurance, that he would propoſe nothing which ſhould not be for their advantage[144]. He then prepared an Agrarian law, for eſtabliſhing certain new colonies, and making a diſtribution of vacant lands. All former laws of this kind, as we have already ſeen, had been a ſource of bitter contention; and ſeveral of them might have been liable to exceptions, though not of that magnitude, as to juſtify the blood that was ſhed in the quarrel. Plutarch indeed endeavours to ſet the preſent law in a very unfavorable light, by charging Cæſar with the mean deſign of flattering only the poor and indigent, and of degrading the dignity of the conſul by exerciſing the function of the tribune[145]. But Dio gives a much more candid, and, probably, more true account, by repreſenting the numerous advantages that were likely to reſult from it; by ſhewing that it was framed upon ſuch clear principles of equity and humanity[146], that even

[144] Τῳ δε ἐξης ετει ὁ Καισαρ το συμπαν θεραπευσαι πληθος ἠθελησε, ὁπως σφας ετι και μαλλον σφετερισηται. βουληθεις δε και τα των δυναλων δοκειν (ἱνα μη και δ' απιχθειας αὐτῳ ωσι) πρατειν, ειπε σφισι πολλακις, ὁτι ουτε γραψει τι ὁ μη και ἐκεινοις συνοισει. Dio Caſſ. 38. 1.

[145] Ἠρξθη μεν γαρ ὑπαιος Καισαρ· ευθυς δε θεραπευων τον απορον και πενητα, κατοικιας πολεων και νομας αγρων ἐγραφεν, ἐκβαινων το της αρχης αξιωμα, και τροπον τινα δημαρχιαν την ὑπατειαν καθιστας. Plut. in Pomp. p. 473. "In hoc conſulatu Cæſar legem tulit, ut ager Campanus plebi "divideretur, ſuaſore legis Pompeio. Ita "circiter viginti millia civium eo deducta, "et jus ab his reſtitutum." Vell. Pat. 2. 44.

[146] Και δη γνωμην τινα περι της χωρας, ἐν πανηι τῳ ὁμιλῳ κατενειμεν, οὐτω συνεγραψεν, ὡστε μηδε μικρον τι αὐτης αιτιαθηναι· και ουδε ταυτην μεντοι εσοισειν, ει μη βουλομενοις σφισιν ειη, επλατυνθη. του μεν δη ουν νομου ἑνεκα ουδεις αὐτῳ ουδεν επεκαλεσαι ἐδυνατο. Dio Caſſ. 38. 1.

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ſenators themſelves, though frequently called upon in the houſe to deliver their unreſerved opinions, had not a ſingle objection to offer; but ſat down in ſullen ſilence, determined to put a negative upon it at all events[147]. Even the wiſe and diſpaſſionate Cato could only ſay, that things ought to go on in their old channel[148]; for which Cæſar immediately ordered him to priſon, by a ſtretch of power as tyrannical, as the oppoſition was abſurd; though he immediately repented and revoked the commitment. The law, however, being powerfully ſupported by Pompey, was ratified by the "comitia;" and the ſenators were obliged to take an oath to obey it, under ſevere penalties[149]. Having thus eſtabliſhed himſelf in the favor of the people, he enacted ſeveral other laws; which, though not particularly ſpecified by the hiſtorian, were moſt probably of a very liberal and beneficial tendency; becauſe not even Cato offered to give them any oppoſition[150].

To prevent Pompey from taking the advantage of his intended abſence, to the detriment of his intereſt, Cæſar gave him in marriage his daughter Julia[151]; who, by her many perſonal accompliſhments, ſo endeared herſelf to her new lord, and became ſo firm a cement of the union, that the new aſſociates, with the reciprocal

[147] Ἐπεκω μεν ουν των γραφεντων απαντες ησαν, ὡστε μη διαρραι το σωμα ὑπισχνουμενον δι μηδενα τολμησαι. και γαρ προαπηγον αὐλα ει τη βουλη, και ὀμνυειν ἐπι ἑκαστον αὐλον ἀναπειθον, ἐπηρτησε, μη τι τις αὐτιαται· μιλαγραψειν, η και παντελως ἀπαλειψειν, ει γε τω μη ἀρεσειε τι, ὑποσχομενος. το δε δη συμπαν, και φασι και ἀδυνατει, ὀργη ἐξω της συνηθειας οὐσης, ἐδυσχεραινον. και αυτο γε τουτο αὐτους η τα μαλιστα ἐλυπει, ὁτι τοιαυτα συγγεγραφως ην, ὡστε μηδενα αιτιαν δυνασθαι λαβειν, και παντας ὀφλειν βαρυνειν. Dio Caſſ. 38. 2.

[148] Ὁ δε Κατων ὁ Μαρκος—τους μεν γεγραμμενους ουδεν ωφ' αὐλου ἐπικαλει, το δ' ὀλον ἀξιον τη τε πατρι ξυνοψει σφας καταστασει χρησθαι, και μηδεν ἐξω αὐλης ποιειν. Id. 38. 3.

[149] Ου μονον ην την διανομην ἐκυρωσαν, ἀλλα και προσωμοσαντο τον συγκλητον ὁμοσαι παντας, η μην ἐπιβεβαιωσειν την γραφην, και βεβηκοσιν ἀν τις τ' ἀναντια πραττη· μεγαλαι ταξαι ἐπιτιμια των μη ὁμοσαντων. Plut. in Cat. p. 248.

[150] Το μεν ουν πληθος ἐκ τουτων ὁ Καισαρ ἀντεποιησατο—ἐπειτα δι και ἀλλα πολλα διεκοσμησε, μηδενος ἐναντιουμενου. Dio Caſſ. 38. 7.

[151] Ὁ δι (ſc. Καισαρ) και την ἀποδημιαν δι χρονου ὡρων ἐποιειτο, και τον φθονον ὡς ἐπι μεγιστοις δη τοις διδομενοις μειζονα, Πομπηϊω μεν ἐζευγνυ την θυγατερα. App. de Bell. Civ. p. 435.

aſſiſtance

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assistance of each other, shared the highest honors of the republic between them; and lived, apparently, in a perfect state of amity and concord. Though self-created, and, as such, unconstitutional, their administration was far from being so oppressive upon the people, as that of the aristocracy at large, who had no fixed and uniform plan of government in which they all concurred; but each individual, aiming at as much power as he could obtain, became a separate tyrant within his own province, and harassed the defenceless inhabitants without mercy or discretion; while, by their mutual jealousies and animosities, they were no less the disturbers of the peace of one another. But the triumvirs set out upon a somewhat more moderate principle: their opposition was chiefly levelled against the senate; and therefore they, at least, made a shew of supporting the cause of the people, as a counterbalance to their rivals; so that, though the antient constitution was not restored, the people, well satisfied with this state of humiliation to which their former oppressors were now reduced, contentedly reposed themselves under the shadow of liberty, without much regarding the substance.

During this time, Clodius, with the countenance of the triumvirate, took the lead among the people; pretending to assert their rights, and to devote himself to their cause; and passing some laws, that would have done credit to a more worthy author. But this affectation of popularity, void of every good principle, proved a disease as pestilential to the state, as the most arbitrary power. By strengthening his influence, it enabled him to foment sedition, to encourage vice, to oppress virtue; and, among other mischiefs, to gratify his revenge by the banishment of Cicero, who, with great spirit, had detected and exposed his wickedness.

Cæsar being now departed to his government in Gaul, Pompey bore the chief sway at home; and, having procured the recal of

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Cicero, was, by his interpoſition, reconciled to the ſenate, and made ſovereign both by ſea and land [152]. His victorious colleague, in the mean while, having extended his arms over the hitherto unexplored provinces of Gaul, remitted ſuch immenſe treaſures to Rome, that he was furniſhed with the means of purchaſing the affections of all ranks, conditions, and ſexes; and having repaſſed the Alps, was attended in his winter-quarters by a ſplendid train of people, as well as of ſenators and magiſtrates; all of whom he ſent back amply ſatisfied with his bounty [153]. The league was renewed; Pompey and Craſſus were fixed upon for the conſulſhip; rewards were diſtributed among their dependents; and Cæſar himſelf confirmed in his government of Gaul for another term of five years. A. U. C. 697.

Thus did the harmony of the triumvirate continue uninterrupted, at leaſt in outward appearance, till the death of Julia. The ſudden loſs of this amiable lady was a blow, ſeverely felt by every true friend of his country's welfare. The foreſight of thoſe dreadful calamities, that were likely to enſue from this melancholy event, cauſed an univerſal dejection of ſpirits through the city. The people, with a generous ſympathy, celebrated her funeral, and honored her memory, by every poſſible token of eſteem, which the ſuperſtition and magnificence of theſe times could invent; but the A. U. C. 699.

[152] Νομῳ κατελθων ὁ Κικερων, την τε βουλην εωθους τῳ Πομπηϊῳ διηλλαξε, και τῳ συντακτῳ νομῳ συνηγορων, τροπῳ τινι παλιν γης και θαλαττης ὁσην ικεκληϊο Ρωμαιοι, κυριον εποιει Πομπηϊον. επ' αὐτῳ γαρ εγινοντο λιμενες, εμπορια, καρπων διαθεσεις· ἱν λογῳ, τα των πλειοσων πραγματα, τα των γεωργουντων. Plut. in Pomp. p. 476.

[153] Χρυσον και αργυρον και τ' αλλα λαφυρα και των αλλων πλουτων των εκ πολεμων τοσουτον περιηγουμενον εις την Ρωμην απεστελλεν, και διαπεμπων ταις δωροδοκιαις και συγχωρησεσιν αγοραιομοις και στρατηγοις και ὑπατοις, και γυναιξιν αυτων, ἡμιωτο πολλης· ὡστε ὑπερβαλλοντος αυτου τας Αλπεις, και διαρχιμαζοντος ἱν Λυκῃ, των μεν αλλων ανδρων και γυναικων αμιλλωμενων και φερομενων πολυ πληθος γινεσθαι, συγκλητικους και διακοσιους, ἱν οἱς Πομπηϊος ἡν και Κρασσος, ανδριαντων δε και στρατηγων ἑκατον εικοσι βαδδης επι ταις Καισαρος θυραις οφθηναι. τους μεν ουν αλλους απαντας ἐμπλησας ελπιδων και χρηματων απεστελλε· Κρασσῳ δε και Πομπηϊῳ μονος αυτον εγινοντο συνθηκαι· μιλωναι μεν ἑκατον εκεινοις, και Καισαρα συλλαμβανειν αυτους σιτηρεσια των στρατιωτων συχνους επι την ψηφον. Id. p. 478.

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partial ſuperiority of reſpect ſhewn, on this occaſion, to Cæſar, though abſent[154], ſerved only to rekindle the embers of jealouſy, that were ſtill glowing, and ill-ſmothered, in the breaſt of Pompey. This general affliction was further aggravated, by the arrival of the fatal news of the defeat and death of Craſſus; who, by his weight and prudence, had hitherto kept the two rivals in proper awe of each other[155]. Thus, every common tie of union being broken almoſt at the ſame inſtant, mutual diſcord and envy ſucceeded in the place of confidence and friendſhip; till the whole empire became too narrow, to fill up the meaſure of their boundleſs ambition[156].

The factious intrigues of the nobility having now thrown the city into an univerſal confuſion, the public cry was for a dictator. But Cato, ever fearful of opening the door to tyranny, endeavoured to moderate this impolitic and dangerous ardor, by propoſing the creation of ſome other magiſtrate[157], with a ſuperior degree of power to that of the ordinary conſul, but without exempting him from the

A. U. C. 701.

[154] Παρεσκευασμενω δε Πομπηϊω το σωμα δαττειν εν Αλβανω, βιασαμενος ὁ δημος εις το Αρειον πεδιον κατηγαγεν, οικτῳ της κορης μαλλον, η Πομπηϊω και Καισαρει χαριζομενος. αυτων δε εκεινων μειζον εδοκει μερος αποϊσι Καισαρι νεμειν ὁ δημος, η Πομπηϊῳ παραϊσι της τιμης. Plut. in. Pomp. p. 480.

[155] Ευθυς γαρ εκυμαινεν ἡ πολις, και παντα τα πραγματα σαλον ειχε και λογους διαφατικους, ὡς ἡ προτερον παρακαλυπτουσα μαλλον η κατεργασα των ανδρων την φιλαρχιαν οικειοτης αφηρηται. μεθ ὁ πολυ δε και Κρασσος εν Παρθοις απολωλως ηγγελλετο· και τουτο κωλυμα ον μεγα του συμπεσειν τον εμφυλιον πολεμον, εκποδων εγεγονει. δεδιοτες γαρ εκεινον αμφοτεροι, τους προς αλληλους αμφοτερους ενιμον δικαιους. Id. p. 481. "Tum in gladios cædeſque "civium furente ambitu, cujus neque finis "reperiebatur, nec modus." Vell. Pat. 2. 47.

[156] Ουτως ὁ τυχη μονον ετι φερες την φυσιν. ου γαρ αποπιμπλησιν αυτης την επιθυμιαν, ὁπου τοσουτον βαθος ηγεμονιας και μεγεθος ευρυχωριας δυοιν ανδροιν ουκ επισχει, αλλ' ακουσιους και αναγινωσκοντας ὁτι τριχθα δε παντα δεδασται τοις Θεοις, ἑκαστος δ' εμμορε τιμης, ἑαυτοις ουκ ενομιζον αρκειν δυσιν ουσι την Ρωμαιων αρχην. Plut. in Pomp. p. 481.

[157] Υστερον δε παλιν αναρχιας γενομενης, και πλειονων ηδη του περι το δικτατωρος λογου εγκρατων ιταμωτερον, φοβηθεντες οι περι Κατωνα μη βιασθωσιν, εγνωσαν αρχην τινα του Πομπηϊου προσθεντες νομιμον αποτριψαι της ακρατα και τυραννικης ελπιδος. Plut. in Pomp. p. 482. Dio Caſſ. 40. 50.

coercion of the law [158]. Though unwilling to be the leader upon ſo critical a point, he readily ſeconded the motion of Bibulus, to appoint Pompey *ſole conſul* [159]; but even this was a deſperate remedy at beſt; and would never have been applied, had the true ſpirit of the old conſtitution ſtill continued in its full vigor. The precedent was wholly new, but was eagerly embraced by the ariſtocratical party; who, knowing that Pompey had been always leſs attentive to the people, than Cæſar, thought this a fair opportunity of detaching him from the popular ſide, and of enticing him over to their own. In this they were not deceived: for, proud of this unexpected honor, Pompey no longer regarded the intereſt of the commons, but regulated his future conduct entirely by the opinion of the ſenate [160].

His firſt effort of authority was very properly levelled againſt bribery; one of the moſt epidemical vices of that libertine age, and the chief ſource of the preſent evils [161]. He likewiſe enacted ſeveral other laws to regulate public trials, and to make all public officers accountable for their behaviour, during the time of

[158] Ἡ βουλὴ δὲ συνῆκε μετὰ δίους, καὶ ἐς τὸν Πομπήϊον ἀφιεῦρον, ὡς αὐτίκα σφῶν ἐσομένου δικταλώρα (χρῆζειν γὰρ αὐτοῖς ἀφαιρετοῦ τὰ παρόντα τοιάσδε θεραπείας) Κάτωνος δ' αὐτοὺς μεταδιδάξαντος, ὑπάτου μὲν εἱλέσθαι χωρὶς συνάρχου, ὡς αὖ ἔχοι τὴν μὲν ἐξουσίαν διπλαΐωρος, ἄρχων μόνος, τὴν δ' εὐθύναν ὑπάϊος. App. de Bell. Civ. p. 440.

[159] Πᾶσαν μὲν ἀρχὴν βάλλον αἱρούμενος ἀναρχίας, Πομπήϊος δὲ μηδὲν βέλτιον ἄρξειν ἐν ταραχαῖς τηλικαύταις νομίζων. διέλαμψε δὲ τῆς βουλῆς, καὶ ψηφισαμένης ὅπως ὑπατος αἱρεθείς ὁ Πομπήϊος ἄρχοι μόνος. Plut. in Pomp. p. 482. "Tertius conſulatus ſoli Cn. Pompeio, etiam adverſantium antea "dignitati ejus delatus eſt." Vell. Pat. 2. 47.

[160] Εἶεν μὲν δὴ τοῦτο καὶ ἐπὶ μηδενὸς ἄλλου γενόμενον ἔπραξαν, καὶ ὀρθῶς αὐτὸ ποιῆσαι ἔδοξαν, ἐπειδὴ γὰρ ἥλω τοῦ Καίσαρος τῇ ὁμιλίᾳ πρόσκειτο. ἀποξῆξαι τε αὐτὸν ἀπ' ἐκείνου παλαπασι καὶ σφετερίσασθαι ἠλπισαν. καὶ ἰσχὺν ἅμα τῷ τε καινῷ καὶ τῷ παραδόξῳ τῆς τιμῆς ἐπαρθείς, οὐκέτι οὐδὲν ἐς τὴν τῶν πολλῶν χάριν ἐβουλεύσατο, ἀλλ' ἀκριβῶς πᾶσα τὰ τῇ βουλῇ ἀρεσκόντα ἔπραξε. Dio Caſſ. 40. 50.

[161] Ὁ δὲ Πομπήϊος δίκας ἐρρύθμισε τῶν τε ἄλλων ἁμαρτημάτων, καὶ μάλιστα δωροδοκίας καὶ δίκασμοῦ. ἐδόκει γὰρ ἐντεῦθεν αὖθις νόσειν τὰ κοινὰ πράγματα, ἐν τούτῳ καὶ τὴν ἰσχὺν ἔχειν ταχύταν. App. de Bell. Civ. p. 441. Ἐπεὶ δὲ ταῖς δίκαις τῶν δωροδοκιῶν καὶ δικασμῶν ἐπίσας καὶ νόμους γράψας καθ' οὓς αἱ κρίσεις ἐγίνοντο, τὰ μὲν ἄλλα σώφρονος ἐδόκει καὶ καθαρὸς, ἀσφάλειαν ἅμα, καὶ κόσμον καὶ ἡσυχίαν, αὖτις προκαθήμενος μετ' ὅπλων, τοῖς δικαστηρίοις παρεῖχε. Plut. in Pomp. p. 484. "Ejus "conſulatus omnem vim in coërcitionem "ambitus exercuit." Vell. Pat. 2. 47. Dio Caſſ. 40. 52.

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their magiſtracies [162]. Theſe auſpicious beginnings diffuſed a ray of hope over this gloomy ſcene of diſtraction, and ſeemed to promiſe a return of order and tranquillity.

But the inordinate love of power is the poiſon of public virtue; and high honors too often vitiate even the pureſt hearts [163]. With all this pretended concern for the chaſte and uncorrupt adminiſtration of juſtice, his partiality upon the trials of his friends was notorious and ſhameful [164]. Neither was he leſs ſcrupulous in his legiſlative character: for, though the author of ſeveral very commendable and wholeſome laws, he was generally one of the firſt to violate them [165]; or, which was equally ſcandalous, to reſerve ſome exceptions out of them, in favor of himſelf. Of this we have a remarkable inſtance in the renewal of a law, to require candidates for offices to be preſent at the elections; and, in another, to prohibit ſuch as had borne any magiſtracies within the city, from being appointed to any foreign provinces before the expiration of five years. For, at the moment of paſſing the ſame, he accepted, without bluſhing, a continuation of his own command in Spain for five years; and finding that Cæſar's friends were offended at the former law, procured a diſpenſation for him to ſtand for the conſulſhip during his abſence. Thus did this *great* man, as he hath been uſually called, adminiſter the government according to his own abſolute pleaſure [166]; or, rather,

[162] Νομῳ τι ὡρίζιν, απο της ἐκεινου το παρων ὑπαλλιας ις το παρον, ευθυνειν τον ἐθελοντα. App. de Bell. Civ. p. 441.

[163] Μεγαλαι τιμαι, και αἱ ὑπερογκοι ἐξουσιαι, και τους τοιουτους ἐκπαιρουσι και διαφθειρουσιν. Dio Caſſ. 36. 18.

[164] Of this Plutarch had recorded two very ſtriking inſtances, in Pomp. p. 484.

[165] Thus we find him repreſented by one of the ableſt and moſt impartial of the whole body of Roman hiſtorians; "Tum Cn. "Pompeius, tertium conſul, corrigendis "moribus delectus, et gravior remediis quam "delicta erant, ſuarumque legum auctor "idem ac ſubverſor, quæ armis tuebatur, "armis amiſit. Exin continua per viginti "annos diſcordia, non mos, non jus: de"terrima quæque impune; ac multa ho"neſta exitio fuere." Tacit. Annal. 3. 28.

[166] Ταυτα τι ουν ἀλλα δηλοι, και τον παντι τρο τῃ αρχαιρεσιων νομον, τον κελευοντα τους αρχην τινα επαγγελλοντας, ις την ἐκκλησιαν παντως παρειναι, ἀν τε μηδενα

rather, proſtitute the dignity of this venerable office, to the maintenance of his ambitious and ſelf-intereſted pretenſions [167]. Such, likewiſe, are the ſignal ſervices done to the public in this *third conſulate* of Pompey, which Cicero has been pleaſed to compliment with the title of *divine* [168].

Having ſhewn how far he dared inſult a mighty people, by ſuch unconſtitutional exertions of unlimited power, he condeſcended to aſſume a partner into the conſulſhip for the remainder of the year; though he ſtill affected a degree of ſuperiority, and took upon himſelf to preſcribe rules of conduct to the ſucceeding magiſtrates. In all this he was implicitly ſupported by the ſenate, or, more properly, by a ſelect and aſpiring faction; partly, out of revenge to Cæſar, who had not been quite ſo complaiſant to their ſublime order; and partly, becauſe Pompey ſeems not to have moleſted them in the purſuit of their pernicious deſigns; which, in their ideas, was a reſtoration of the languiſhing republic [169].

To this unpromiſing criſis had the ſtate of public affairs advanced, when Pompey, on his return from Naples, after a dangerous illneſs, was met by an immenſe concourſe of all ranks and degrees,

μηδενα απολλα αἱρεσθαι, παρημελημενον πως αὐτοις· το τε δογμα το μετρον ἐμπροσθεν γενομενον, ὡστε τους αρξαντας ἐν τῃ πολει, μη πρωτερον ἐς τας ἐξω ἡγεμονιας, πριν πασι τοις παρελθοιεν, κληρουσθαι, ἐπικυρωσεν. ουδ' ἐσχυθη μεν τοτε τοιαυτα γραψαντες ὑστερον δε ου πολλῳ αὐτος τε την Ἰβηριαν ἐς πεντε ἀλλα ἐτη λαβων, και τῳ Καισαρι και αποντι (ὁι γαρ φιλοι αὐτου διηνεκεστερον ἡγωνιζοντο) αὐτησαι την ὑπατειαν, ὡσπερ ἐψηφισατο, δους.——Ὁ μεν ουν Πομπηϊος ταυτα ἐπεπολιτευσατο. Dio Caſſ. 40. 56. Plut. in Pomp. p. 484.

[167] Ταδε ἡ βουλη λαμπρως ἐπαινεσασα, δυο τε ἀθλα τιθησι και χρονον ἐς την ἀρχην των ἰδιων ἑκατερῳ τῳ Πομπηϊῳ προσψηφισαμενο. App. de Bell. Civ. p. 442.

[168] Thus, ſpeaking of having promoted the foregoing law in favor of Cæſar, at the inſtigation of Pompey, he adds, "Etiam "a Cnæo noſtro, in illo *divino* tertio con"ſulatu." Ad Att. 7. 1.

[169] Και ὁ Πομπηϊος, ὡς ηδη τα χρηϛοτατα της μοναρχιας διωρθωμενος, τον Σκιπιωνα συναρχον ἐς το λοιπον του ἐτους ἐποιησατο· και μιᾳ τυθ' ἑτερων ἐς τη, ἀρχην καθισταμενων, ὑδεν ἡττον ἐφρονει και ἐδυναστευε· και ωσθ' ἡν ἐν Ῥωμῃ τοτε Πομπηϊος· ἡ γαρ ἐυνοια της βουλης μαλιστα ἐς αὐτον ἐτοιμη, ζηλῳ τε του Καισαρος, ἐς ουδεν αὐτῃ παρα την ἰδιαν ὑπατειαν κεχρημενου, και ὁτι νοσουσαν ὁ Πομπηϊος την πολιτειαν ὀρθως ἀναλαβοι, και ὑδεν ἀφων παρα την ἀρχην φορτικος ἡ ἐπαχθης γενοιτο. App. de Bell. Civ. p. 442.

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to congratulate him upon his recovery; which event, without any apparent connexion with ſo dreadful a conſequence, has been conſidered as one of the principal cauſes of the diſtractions which ſoon after enſued. The exceſſive adulation paid him on this occaſion ſo ſwelled him up with pride, that, loſt to his uſual prudence and circumſpection, he treated Cæſar's power with the higheſt contempt; pretending to be able to pull him down with more eaſe than he had raiſed him [170]; and, in this frenzy of arrogance, boaſting, that "in "whatever part of Italy he ſhould but ſtamp his foot, whole armies "both of infantry and cavalry would inſtantly ariſe [171]." This unprovoked inſolence could not fail to touch the delicacy of Cæſar's honor; to fill his mind with reſentment; and to blow up the flame of that fatal civil war, which ſoon conſumed the tottering remains of this once majeſtic commonwealth.

Such is the faint and ſuperficial ſketch of this ſplendid, but inauſpicious, æra, called by the hiſtorian the *third age of Rome* [172]; which may be conſidered as a kind of intermediate ſtate between republicaniſm and monarchy; and was frequently expoſed to the tempeſtuous extremes of each. A ſtate, of all others, the moſt uncomfortable and unpropitious to the humble and induſtrious part of the community, whoſe liberties wholly depended upon the daily caprice

[170] Thus do we find this remarkable event recorded by his biographer. Ὥστε τὴν κομιδὴν αὐτῷ καὶ πομπὴν, θέαμα καλλιστον εἶναι καὶ λαμπροτατον. ἥδιστος μέντοι τοῦτο λέγεται τῶν ἀπεργασαμένων τὸν πολεμον αἰτιῶν ἐλαττον γενέσθαι. Φρόνημα γὰρ ἰσχηλθεν ὑπεραῖρον ἅμα τῷ μεγέθει τῆς χαρᾶς τὴς ἀπο τῶν πραγμαίων λογισμὼς· καὶ τὴν εἰς ἀσφαλὲς αἰὶ τὰ εὐτυχήματα καὶ τὰς πράξεις αὐτῷ θέμενὴ ἐνλάβειαν προεμένος, εἰς ἀκρᾶτον ἐξέπεσε θράσος καὶ παραφρόνησιν τῆς Καίσαρος δυνάμεως, ὡς οὐτε ὅπλων ἐπ' αὐτὸν, οὔτε τίνος ἐργώδους πραγμαίειας δεησομένος, ἀλλὰ πολὺ ῥᾴδιον καθαιρήσων ἢ πρόσερον ἤυξησε τὸν ἄνδρα. Plut. in Pomp. p. 486.

[171] Οὕτω δ' ἦν ὁ Πομπήϊος ἐπῃρθη, καὶ τοιαύτης καὶ τοσαύτης ὀλιγωρίας δια το θαῤῥεῖν ἐγένετο μέγος, ὥστε καὶ τῶν δεδίοτων τὸν πολεμον κατέγελα, καὶ τὺς λεγοντας, ἂν ἐλαύνῃ Καισαρ ἐπι τὴν πολιν, οὐκ ἔχειν δυναμεις ἂις αὐτὸν ἀμυνεῖσθαι, μειδιῶν τῷ προσώπῳ καὶ διακεχυμένος ἀμελεῖν ἐκέλευεν. Ὅπου γὰρ ἂν, ἔφη, τῆς Ἰταλιας ἐγω κρούσω τῷ ποδὶ τὴν γῆν, ἀναδυσονται καὶ πεζικαι καὶ ἱππικαι δυναμεις. Id. ib.

[172] "Hæc eſt illa *tertia ætas* populi Ro- "mani tranſmarina, qua, Italia progredi "auſus, orbe toto arma circumtulit. Flor. 3. 12.

of

of their imperious governors, without any fixed principles of government, whereby to regulate their obedience. Whatever, therefore, was the name of the tyrant, whether Marius or Sylla, Pompey or Cæſar; whether the power of the ſenate was to yield to the people, or that of the people to the ſenate; each party was perpetually ſtriving which ſhould give laws to the other; each obtained the victory in turn; while the wounded conſtitution lay bleeding at every vein. Having no foreign enemies to contend with, ſo formidable as themſelves, they embrued their mercileſs hands in each others blood; and thus, expiring amid the blaze of their own glory, became ſtriking examples to the world of this awful truth, that "the favors of fortune are the moſt dangerous ſnares; and "the ſmiles of proſperity more pregnant with miſchief, than the "frowns of adverſity"[173].

CHAP. II.

Origin of the Imperial Government under Julius Cæſar.

POMPEY and his confederates were arrived at the ſummit of their power in Rome; while the common people, wearied out with their tyranny, were waiting with anxious expectation for the return of Cæſar, who had united the hitherto unexplored regions of Gaul to the Roman empire, and ſpred the terror of his arms to the extremities of the weſtern world[1]. He was now on his return to his own country, to take poſſeſſion of the conſulſhip, for which, as we have already ſeen, he had been permitted

[173] Τα μεγαλα δωρα της τυχης εχει Φοβον,
Και το φαιν λαμπρον ουκ ακινδυνον κυριι.
Johnſ. Gr. Epigr. 78.

[1] Ενθι τα Ῥωμαιων πραγματα διεστη, των μεν αριστοκρατικων Πομπηϊῳ παροδι προσθεμενων, των δε δημοτικων Καισαρα παρακαλουντων εκ Γαλατιας επι τους ὁπλους οντα. Plut. in Ant. 69.

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to become a candidate during his abſence. But his opponent, whoſe affections varied with every blaſt of ſelf-intereſt, dreading the predominancy of his influence, prevailed upon the ſenate to refuſe him that well-earned reward of his victories, unleſs he would firſt reſign his government, and diſband his army [2].

Though Cæſar could not, in prudence, comply with ſuch treacherous conditions [3], he gave many unequivocal proofs of the moderation of his own demands; and ſtrove in the moſt earneſt manner to bring about an accommodation upon equal terms; offering to lay down his arms, if Pompey would do the ſame, and, returning each to his private ſtation, agree to ſubmit their diſputes to an amicable conference [4]. But the evil ſpirit of Diſcord, envying the tranquillity of Rome, took ſuch firm poſſeſſion of the hearts of the ariſtocratical party, that they would not ſuffer the letters of Cæſar to be opened; till Antony, in virtue of his tribunitian power, having read them publicly in the ſenate, they were found to carry ſuch ſtrong internal marks of the ſincerity of his intentions, and of the reaſonableneſs

[2] This we learn from Cælius in a letter to Cicero; "Cn. Pompeius conſtituit non pati "C. Cæſarem conſulem aliter fieri, niſi exercitum et provincias tradiderit." Epiſt. ad Fam. 8. 14.

[3] "Cæſari autem perſuaſum eſt, ſe ſalvum "eſſe non poſſe, ſi ab exercitu receſſerit." Id. ib.

[4] Thus ſays Cælius (who was none of Cæſar's friends) in the ſame letter; "Fert "illam tamen conditionem, ut ambo exercitus tradant." Id. ib. Of this we have a further account from Cæſar's own mouth, in his oration to his mutinous army at Placentia; Καιτοι εγωγε τοσουτον πιστευω τοις δικαιωμασι του Πομπηϊου νομιζω, ὡστε και εις δικην πολλακις αυτον προκαλισασθαι· και σπενδη γε μη ηθελησεν ειρηνικως ὑπο του συνηθους διακριθηναι, πασι μεν τον δημον, πασιας δε τους συμμαχους ελπισαι δια τουτο προσθησεσθαι. Dio Caſſ. 41. 32. Thus, in another place, ſpeaking of himſelf; "Ad omnia ſe deſcendere paratum, atque "omnia pati reipublicæ cauſa. Proficiſcatur Pompeius in ſuas provincias; ipſi "exercitus dimittantur; diſcedant in Italia "omnes ab armis; metus e civitate tollatur: libera comitia, atque omnis reſpublica ſenatui populoque Romano permittatur." Cæſ. de Bel. Civ. 1. 9. & 3. 90. To which we may add the teſtimony of the following authors, who cannot be ſuſpected of partiality to his cauſe; "Nihil "relictum a Cæſare, quod ſervandæ pacis "cauſa tentari poſſet: nihil receptum a "Pompeianis." Vell. Pat. 2. 49. Ου μην αλλ' ἡ γε παρα Καισαρος αξιωσις, το προσχημα της δικαιολογιας λαμπρον ειχεν. ηξιου γαρ αὐθις τε καταθισθαι τα ὁπλα, και Πομπηϊου ταυτο πραξαιτος, αμφοτερους ιδιωτας γενομενους ἐυρισκισθαι τι παρα των νομων αγαθον. Plut. in Cæſ. p. 133.

of

of his propoſals, that many of the fathers inſtantly changed their opinions, and declared themſelves converts to the cauſe of Cæſar[5].

The queſtion being now put, whether both the competitors ſhould be obliged to diſmiſs their troops, it was received, with the loudeſt clamors of approbation, by almoſt the whole aſſembly. Cicero likewiſe, undertaking the office of mediator, prevailed upon Cæſar's friends to abate ſome part of their demands, with which even Pompey himſelf would, moſt probably, have acquieſced[6]; had not the invincible ſcruples of Cato, and the violence of the conſul Lentulus, put a final ſtop to all further hopes of a reconciliation[7]. Each party therefore prepared to appeal to the valour of his own arm. Cæſar, with a mind full of ſerious and ſolemn meditation upon the conſequences of his attempt, paſſed the Rubicon; and thus the fatal die was caſt[8], which determined the future fortune of Rome, and laid the foundation of an abſolute monarchy. A. U. C. 704.

In the midſt of the deep concern, which every generous mind muſt feel at this triumph of deſpotiſm, there is one conſideration behind, that will afford inexpreſſible comfort to every ſincere

[5] Τας Καισαρος επιτολας ο προσιεμενων, και εωθεν αναγινωσκεσθαι των συγκλητικων, αυθις (ſc. Αντωνιος) ισχυεν δια το αρχειν αντιγω, και πολλους μετεστησε τη γνωμη, δικαια και μετρια Καισαρος αξιων αφ' ων εγραψε δοξαιεν. Plut. in Ant. p. 70. et in Pomp. p. 488.

[6] Κικερων ο ξυλλεξε, μετα παντων εκ Κιλικιας και διαλλαγας πρατλων, εμαλατλε τον Πομπηϊον. ο δε τ' αλλα συγχωρων, της πρατιστας αφηρει. και Κικερων μεν επειθε της Καισαρος φιλης συνεδριας επι ταις εσπεριαις επαρχιαις, και πρατιστοις μονοις εξακισχιλιοις πειθεσθαι τας διαλυσεις. Πομπηϊος δε καμπτομενην και διδοθαι, δι περι Λεντλον εκ εων υπαλευσαι, αλλα και της βυλης Αντωνιον και Κυριωνα περσπηλακισαντες, εξηλασαν ατιμως. Plut. in Cæſ. p. 134.

[7] Αθηνησι πρωτησεν ει δοκει και Πομπηϊον ομε και Καισαρα τα οπλα καταθεσθαι και τας δυναμεις αφεινα. ταυτην ιδιξατο λαμπρως την γνωμην απαντες, και μιαν βοην επαινουντες τον Αθηνιον, ηξιον επιψηφιζεσθαι. μη βουλομενων δε των υπατων, αυθις ετερας δι Καισαρος φιλοι πρ' υτεναν επιτιμιους δοκουσας αξιωσεις, αις ο, τε Κατων αθετησε, και Λεντλος υπατευων εξεβαλε της βυλης τον Αθηνιον. Plut. in Ant. p. 70. And again; Πομπηϊω δε δυσκολαινοντος, επεισθησαν δι Καισαρος φιλοι θατεραν αφιεναι. Λεντλω δε αντικρουσαντος, και Κατωνος αυθις αμαρτανειν τον Πομπηϊον εξαπατωμενον βουλος, ουκ εσχον δι διαλυσεις περας. Plut. in Pomp. p. 488.

[8] Επι τον Ρυβικωνα ποταμον ελθων, ος αφωριζε αυτω την δεδομενην επαρχιαν, εγκ σιωπη, και διαμελλησεν αυτος αρα προς εαυτον συλλογιζομενος το μεγεθος της τολμημαιος. ειτα ωσπερ δι προς βαθος αφιστις αχανες απο κρημνων τινος εαυτους, μυσας τω λογισμω, και παρακρουσαμενος προς το δικαιον, και τοσουτον μονον Ελληνιν προς της παρουσας εκβοησας, ανερριφθω κυβος, διεβαζε τον ποταμον. Plut. in Pomp. p. 489. et in Cæſ. p. 135.

 Chriſtian;

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Chriſtian; when he reflects, that the preſent æra, unpropitious, as it really was, to true liberty, was introductory to thoſe great and important changes, both in the political and religious ſyſtem of the world, wherein the eternal welfare of the whole race of mankind was much more materially intereſted, than either the ignorance of paganiſm is aware of, or the preſumption of infidelity will acknowledge. The antient monarchies of the Eaſt were now paſſed away, and ſwallowed up in the immenſe empire of the Romans, which had long exiſted in prophetic viſion; and which was itſelf preparatory to the manifeſtation of the King of Glory; who was ſoon to put all earthly thrones, principalities, and powers in ſubjection under his feet[9]. While, therefore, we look with deteſtation and abhorrence upon the two rival potentates, ſubverting every law of ſociety, to accompliſh the ends of their own ambition and avarice; we cannot but adore the goodneſs of the Almighty Lord of the Univerſe, who was thus "turning the fierceneſs of man to his praiſe;" and making the worſt paſſions of the human heart ſubſervient to the purpoſes of his Divine Providence.

Such revolutions, as now happened in the Roman ſtate, though, in outward appearance, not more aſtoniſhing than the other ordinary occurrences of the times; and though eaſily accountable from a variety of cauſes, both natural and artificial; ſupply an inexhauſtible fund of uſeful reflexion to philoſophic and ſerious minds; and teach them, that the numerous fluctuations in human governments are not the bare effects of the narrow and ſelfiſh policy of the princes of this

[9] Thus are theſe wonderful deſigns of Providence diſcloſed, in the moſt preciſe terms, by the inſpired interpreter of Nebuchadnezzar's dream: "And the *fourth kingdom* ſhall "be ſtrong as iron; foraſmuch as iron "breaketh in pieces, and ſubdueth all "things: and as iron that breaketh all theſe, "ſhall it break in pieces, and bruiſe. And "in the days of theſe kings ſhall the God of "heaven ſet up a kingdom, which ſhall "never be deſtroyed: and the kingdom "ſhall not be left to other people, but it "ſhall break in pieces, and conſume all "theſe kingdoms, and it ſhall ſtand for "ever." Dan. 2. 40. & 44.

world; but that they have their ultimate origin in the will of God, who condeſcends to promote the inſcrutable deſigns of his infinite wiſdom, by the daily intervention of ſecondary cauſes. Conſiderations like theſe dignify the ſtudy of profane hiſtory, by pointing out its connexion with the ſacred truths of religion; and thus make it of ſervice in meliorating the heart, at the ſame time that it gratifies the curioſity, and enlarges the underſtanding. By perſuading ourſelves, that all our doings are under the inviſible guidance of our Heavenly Director, we may eaſily conſole our minds amid thoſe turbulent ſcenes of diſcord, which ſo frequently interrupt the good order of government, and the harmony of ſociety; and humble the pride of the moſt potent nations of the earth. Fortified by theſe aſſurances, we may look, with devout and pleaſing hope, for the coming of that kingdom when theſe animoſities will be buried in univerſal peace and good-will to each other; and where ſovereign power will be exerted to no other end, than the perfection of our happineſs; a kingdom, which ſhall endure for ever, when time itſelf ſhall be loſt in the abyſs of eternity.

The calamitous effects of theſe civil diſſentions conſtitute the moſt familiar part of the Roman ſtory, and muſt therefore be truſted to the reader's recollection; while we confine ourſelves to ſuch obſervations, ariſing therefrom, as bear a more immediate relation to the ſubject of our propoſed inquiry.

The attention of the whole world, as far as it was then known, was now engaged by this conteſt between the two candidates for univerſal empire; of whom it has, in turn, been obſerved, that "the one could bear no equal, the other no ſuperior." To which of the two the different parts of this deſcription more particularly refer, cannot eaſily be decided at this remote diſtance of time; eſpecially as we find them interchangeably applied to each, according to the private opinions, or prejudices, of thoſe authors, who have taken up

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up the queſtion; and who, on both ſides, are very reſpectable [10]. The utmoſt, therefore, we can venture to affirm is, that, as ambition is for ever inſatiable in its deſires, and irregular in its operations, each probably exerted himſelf either with more or leſs violence, or moderation, in proportion as his paſſions were affected by the temporary exigencies of his ſituation; conſequently, that the character of each varied, apparently, with the times [11]. But, in truth, the contraſt between them does not lie ſo much in the

[10] We ſhall endeavour to bring the moſt conſiderable of theſe into one point of view, and then leave the deciſion to the reader's own judgment. It is ſaid of Cæſar, that when, in his paſſage of the Alps, his friends made ſome ludicrous obſervations upon the violent factions and animoſities which ſubſiſted in a paltry village of that country, he replied, "That "he had rather be the firſt man there, than "the ſecond in Rome." Αιγίλαι δε, τας Αλπεις υπερβαλοισες αυλη, και πολιχνιον τι βαρβαρικον οικημενον υπο ανθρωπων παναπασιν ολιγων και λυπρων παριεχομενως της ἑταιρως, αμα γελωτι και μιλα παιδιας, ηπυ, φαναι, κ' ἀιλαυθα τινες εισιν υπερ αρχων φιλοτιμιαι, και περι πρωτειων ἀμιλλαι, και φθονοι των δυναλων προς αλληλους; τον δε Καισαρα σπουδασαι προς αυλως ειπειν, εγω μεν εθελομην παρα τυτοις ειναι μαλλον πρωτος, η παρα Ρωμαιοις δευτερος. Plut. in Cæſ. p. 111. In another author we find the following compariſon between them: Γνωμη μεν γαρ τοσουτον αλληλων διεφερον, ὁσον Πομπηϊος μεν, ουδενος ανθρωπων δευτερος, Καισαρ δε, και πρωτος παντων ειναι επιθυμει· και ὁ μεν, παρ' ἑκοντων τε τιμασθαι, και εθελοντων προσαιειν, φιλεισθαι τε ισπουδαζε· τω δε ουδεν εμελεν ει και ακοντων αρχοι, και μισουσιν επιασσοι, τας τε τιμας αυτος ἑαυτω διδοιη. Dio Caſſ. 41. 54.

On the other hand, Cæſar himſelf remarks; "Quod neminem dignitate ſecum "exæquari volebat (ſc. Pompeius)." De Bell. Civ. 1. 4. But this, being the obſervation of a profeſſed adverſary, may be liable to the ſuſpicion of partiality: we ſhall confirm it, therefore, by the teſtimony of an eminent poet; who, being his enemy upon principle, will be more eaſily believed, when ſpeaking in his favor:

"Nec quenquam jam ferre poteſt, Cæſarve
"priorem,
"Pompeiuſve parem."
Luc. Pharſ. 1. 125.

Add to this a character drawn by a candid hiſtorian, though far from partial to Cæſar; "Nam neque Pompeius, ut primum ad rem-"publicam aggreſſus eſt, quenquam animo "parem tulit; et in quibus rebus primus "eſſe debebat, ſolus eſſe cupiebat. Neque "eo viro quiſquam aut alia omnia minus, "aut gloriam magis concupiit." Vell. Pat. 2. 33. Again, of the ſame perſon, "Particeps dominationis neque fuit quiſ-"quam; neque ſi pati potuiſſet, orbis ter-"rarum bello concuſſus foret." Sall. ad Cæſ. de Rep. ord. ep. 2. And laſtly, "Nec "hic (ſc. Pompeius) ferebat parem, nec "ille (ſc. Cæſar) ſuperiorem." Flor. 4. 2.

[11] This ſeems to be the idea entertained by the hiſtorian: Τα μεν δη εργα, δ' ων ηλπιζον, παντ' ὁσα εβουλοντο κατεπραξαν, αμφοτεροι ὁμοιως και αναγκη εποιουν. αδυνατον γαρ ην αυτων κατατιχειν τινι μη ου τοις τε οικειοις πολεμουντι, και τους οθνειους επι τους ὁμοφυλους αγαλι, και φιλια μη χρηματα αδικως συλωντι, πολλους δε και των φιλτατων ανομως κλεπτοντι. ωστε ει και ταις επιθυμιαις διαλλαττον, αλλα ταις γε πραξεσι, δ' ων αποπληρωσιν αυτας ηλπιζον, ὁμοιουντο. και δια τουτ' ὀφειλο τινος αλληλοις, καιπερ πολλας δικαιωσεις περιεναμενοι, και ες χειρας τελευτωσης ηλθον. Dio Caſſ. 41. 54.

degree

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degree of power, of which both were equally covetous; as in the uſe made of it by each, in the courſe of their reſpective adminiſtrations.

Pompey, by his more conſtant reſidence in Rome, had much the faireſt opportunities of ſecuring a perſonal intereſt with his fellow-citizens, eſpecially among the nobility, who were the profeſſed enemies of the cauſe of Cæſar; but, like a true diſciple of Sylla, he perſevered in the purſuit of his favorite object, without the leaſt regard to the moral propriety of thoſe means which he employed in the acquiſition. The moſt laudable virtues, therefore, of his heart were too often ſullied by ficklenеſs and diſſimulation; which induced him to adopt a great diverſity of reſolutions, and to temporize with every party that occaſionally flattered his expectations. Tenacious, above all things, of his darling power, he would rather riſk the ſucceſs of his own enterprizes, than ſuffer it to be controverted or diminiſhed. Under the influence of this predominant principle, he refuſed the command of a large fleet to Cato, either on a ſuſpicion of his own, or a ſuggeſtion of his friends, that this determined republican, from his known hatred to the government of a ſingle perſon, would oblige him, on the very day he had conquered Cæſar, to lay down his arms, and ſubmit to the laws of his country [12].

The ſame impolitic jealouſy is thought to have been the cauſe of his neglecting, on a particular occaſion, to give battle to his antagoniſt, when he might have done it with the greateſt proſpect of advantage;

[12] Ἐνθα δε και μαλιστα της γνωμης καταφωρος εδοξε γιγονεναι Πομπηϊος. ὡρμησε μεν γαρ ευχερισαι τω Κατωνι την των νεων ηγεμονιαν· ησαν δε φιλακοσιων μεν ουκ ελαττους αι μαχιμοι, λυδρικα δε και κατασκοπικα και αφρακλα, ταμπληθη. ταχυ δε ισποσας, η διδαχθεις ὑπο των φιλων, ὡς ἰσ ετι πεφαλαιον Καισαρ, πασης πολιτειας ελευθερωσαι την πατριδα, κἀν γενηται κυριος τηλικαυτης δυναμεως, ης αν ημερας καταγωνισωνται Καισαρα, της αυτης εκεινης αξιωσει και Πομπηϊον τα ὁπλα καταθεσθαι, και τοις νομοις ἑπεσθαι, μηδενα καιπερ ηδη διελεγμενος αυτῳ, και βυβλον απεδειξεν ναυαρχον. Plut. in Cat. p. 272.

whereby

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whereby he juſtly provoked his ſoldiers, to upbraid him with pride and vain glory, for chuſing to appear at the head of his army like a king of kings; and for affecting the parade of having his tent daily frequented with a retinue of general officers [13]. Whatever, therefore, might have been the hopes of thoſe who ſo warmly attached themſelves to his cauſe, there is no great probability, that, even had he been ſucceſsful, he would ever have reſtored any part of the antient conſtitution; but would ſtill have held the reins of government in his own hands, under the title of conſul, dictator, or ſome other civil character, that would have put him in full poſſeſſion of the power he aimed at, without alarming the fears of the people [14].

Julius Cæſar's firſt appearance in public life was diſtinguiſhed by every advantage, that could be derived from high birth, and an accompliſhed education [15]. To theſe were added a frank and open heart; a profuſe generoſity; a courteous and affable behaviour; qualities, of all others, the beſt calculated both to ſoften the appearance of his vices, and heighten that of his virtues: which procured him an early popularity [16]; and gave ſome ground to the ſuſpicion that he affected the ſovereignty [17], perhaps, before even his own ambition had been awakened to ſo flattering an object.

His alliance with the family of Marius had laid him open, when very young, to the reſentment and hatred of Sylla; at the ſame time that it made him the refuge of all thoſe who had been ſufferers

[13] Οἱ δ' ἀλλοι παῖδες (ſc. ὠλη Καίωνος) ἐκακιζον τον Πομπηϊον φυγομαχιῶλα, και παρεξυναν, Ἀγαμεμνονα και βασιλεα βασιλεων αποκαλεῖλες, ὡς δη μη βυλομενον αποθεσθαι την μοναρχιαν, αλλ' αγαλλομενον, ἡγεμονων τοσυτων ἐξηρτημενων αὐῖω και φοιτωνλων επι σκηνην. Plut. in Cæſ. p. 144.

[14] Ουτε γαρ ἐκεινος ὁ μεγας Πομπηϊος, ει Καισαρα καθειλεν, ηλπιζεῖο ζεβαιως προησεσθαι τοις νομοις την δυναμιν, αλλ' ἀει τα πραγμαῖα καθεξειν, υ' παῖειας ονομαῖι και δικαῖωριας, η τινος αλλης μαλακωῖερας αρχης παραμυθυμενος τον δημον. Plut. in Bruto, p. 245.

[15] Λιγεῖαι και φυσει προς λογυς πολῖικως ὁ Καισαρ ἀρισα, και διαπονησαι φιλοτιμοτατα την φυσιν. Plut. in Cæſ. p. 102.

[16] Πολλη της περι τας δεξιωσεις και ὁμιλιας φιλοφροσυνης ευνοια παρα των δημοῖων απηλα, θεραπευτικη παρ' ηλικιαν οὐσα. η δε τις και απο δειτνων και τραπεζης, και ὁλως της περι την διαιταν λαμπροτητος αυξανομενη κατα μικρον αυτῳ δυναμις εις την πολιτειαν. Plut. in Cæſ. p. 103.

[17] Κικερων ελεγε τοις αλλοις ἀπασιν επιβελευμασιν αὐτου και πολιτευμασι τυραννικην προφασιν διαφευγειν. Plut. in Cæſ. p. 103.

from

from the oppreſſions of the ariſtocratical faction; as well as of many others, who, under pretence of maintaining the true ſpirit of republican liberty, were enemies to all regular ſubordination whatever. Thus, without any natural diſpoſition of his own, to invade the rights, or interrupt the happineſs, of others (a character which his determined murderer was ready to allow him), he ſuffered the moſt diſſolute members of the community to take ſhelter under his wing, and to abuſe his power, to the ſupport of their own exceſſes [18]. But in nothing did he ſo eſſentially injure his own reputation, as in his conduct with regard to Antony; whom he received into his confidence, and loaded with honors; but, by conniving at injuſtice and profligacy, brought univerſal diſgrace upon his own government, which, in itſelf, deſerved any name rather than that of tyranny [19]. So cautious ought all ſovereigns to be, on whom they confer any particular marks of their favor; as the very beſt and mildeſt may chance to forfeit the eſteem and veneration of their ſubjects, from the miſconduct of their miniſters.

The period we are now contemplating preſents to our imagination a ſuperb and venerable edifice, ſhaken from its very foundation, and threatening each moment to crumble into ruins; while the great men of the times, inſtead of exerting their endeavours to repair and ſupport it, were each contending who ſhould firſt bring it to the ground, and ſeize upon the ſpoil. By whatever name theſe were known; whatever pretences they held forth; whatever party

[18] Ουκ αιλον (ſc. Καισαρα) αγοιλα και φιροιλα παιλας ανθρωπους, αλλ' ιτερων δυναμιν οιλα ταυλα ωρασσοιλων. Plut. in Brut. p. 251.

[19] Αιλωνιω δημαρχηιλι τα γραπτευματα και την Ιταλιαν επιτρεψων. ὁ δε τοις μεν γραιλιωλαις ευθυς ωρουφιλης ην,—τοις δε αλλοις επαχθης. και γαρ αδικουμενων ὑπο ῥαθυμιας ωλυγωρει, και ωρος οργην ηκρατο των ιτυγχαιοιλων, και κακως επι γυναιξιν αλλοτριαις ηκουι. και ὁλως την Καισαρος αρχην, παιλα μαλλον η τυραννιδα δι' αυλον ιτειναι φαιιιται, οι φιλοι διεβαλλον· ὡν Αιλωνιος, απ' ιξουιας μεγιιτης αμαρτανων μεγιιτα δοξας, την ωλειιτην αιτιαν ιλαβεν. Plut. in Ant. p. 71.

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they eſpouſed; empire was the ſole and avowed aim of them all [20]. In the midſt, therefore, of ſo many bad, there is ſome merit in not being the worſt. Though Cæſar had very heartily concurred in the deſtructive ſchemes of the triumvirate, which completed the fate of the conſtitution; yet it ought to be recorded, in common juſtice to his memory, that he ſhewed many early ſigns of a ſincere intention to alter his behaviour; and to make ſome atonement for thoſe miſchiefs, of which the unhappy neceſſities of the times had made him too active an inſtrument.

From the moment that he began his expedition into Gaul, we are told by his biographer, that he adopted an entirely new plan of conduct; that he employed his whole time in raiſing the glory of the Roman arms; while, by his humanity to the conquered nations, and munificence to his fellow-ſoldiers, he exalted his own character above the moſt illuſtrious generals who had ever yet adorned the annals of Rome [21].

By ſuch laudable arts did he facilitate his advancement to that ſovereign power, to which, it is not denied, that he always aſpired; and gained a victory over the prejudices of the people in general, long before his deciſive triumph over his enemies, in the plains of Pharſalia. Theſe are circumſtances which ought, at leaſt, to render him leſs odious in the ſight of an impartial world; and to diſtinguiſh him from the general herd of thoſe ariſtocratical tyrants,

[20] Κασσιον δε τουτον σφοδρον ανδρα και θυμοειδη, και πολλαχου προς το κερδαλεον εκφερομενον του δικαιου, παντος μαλλον φοβου πολεμειν και φλαυασθαι και κινδυνευειν, αυτῳ τινα δυναστειαν κατασκευαζομενον, ουκ ελευθεριαν τοις πολιταις. τα μεν γαρ επι τουτων προσθυτερα, Κινναι, και Μαριοι, και Καρβωνες, αθλον εν μεσῳ και λειαν προθεμενοι την παλαιστραν μονον ουχι ἑκατερωθεν ὑπερ τυραννιδος επολεμησαν. Plut. in Brut. p. 245.

[21] Τοιαυτα μεν ουν λεγεται γενεσθαι τα προ των Γαλατικων. ὁ δε των πολεμων ους επολεμησεν μετα ταυτα, και των στρατειων ας ἡμιρωσατο την Κελτικην χρονος, ὡσπερ αλλην αρχην λαβουσης αυτου, και καταστασιος εις ἑτεραν τινα βιου και πραγματων καινων ὁδον, ουκ εστιν ὁτου των μαλιστα τεθαυμασμενων ἐφ' ἡγεμονια και μεγιστων γεγονοτων απολειπουσα πολεμιστην και στρατηλατην αποδειξιν αυτου. Plut. in Cæſ. p. 115.

who

who were oppreſſing their fellow-citizens, and plundering the public without remorſe or moderation.

It is not a little ſurpriſing, that an interval of more than eighteen centuries ſhould not yet have cooled the paſſions of political diſputants; nor prevented them from calumniating a man, whoſe empire has long ceaſed to exiſt; and in the ruin of whoſe good name they can, at this time, have no poſſible intereſt. Unfortunately, however, the opinion now entertained of the character of Julius Cæſar has been almoſt made a teſt of patriotiſm; a writer, therefore, who ſhould preſume to ſtand up in his defence, might run the hazard of being pointed out as an advocate for arbitrary power.

Prejudices, indeed, of this kind are, in themſelves, much too deſpicable to receive a ſerious refutation; though, it muſt be confeſſed, they derive their origin, in very early times, from the records of his avowed enemies; who had not leſs ability to oppoſe his arms, than wit to blaſt his reputation. Appearing, therefore, under theſe real diſadvantages in the eye of poſterity, from the authority of ſuch evidence as cannot be totally diſregarded, it is no more than an act of juſtice to his memory, to clear it, as far as may be, from ſome part of the aſperſions; by contraſting his virtues with his vices; and evincing from thence, that, though he might be unequal to the praiſes which his flatterers ſo liberally beſtowed, he did not deſerve the many calumnies which were dictated by the indiſcriminate malice of his adverſaries.

Our judgment, upon queſtions of this nature, muſt, in ſome meaſure, be directed by the character of the times. Allowances, therefore, ought to be made for that unreſtrained licentiouſneſs of a military life, wherein moſt of the great men were then trained; and which, though it rendered Cæſar leſs delicate in the purſuit of the favorite objects of his ambition, had not yet ſo far ſhed its baneful

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influence over his mind, as to harden him againſt the tears and ſufferings of his deſolated country. His vices were the evil fruits of an age univerſally corrupt; but his virtues were more peculiarly his own, the native inmates of a heart abounding with generoſity.

His unexpected paſſage of the Rubicon had thrown a ſudden damp upon the confidence of his opponents; and obliged his rival to provide for his own ſafety, by a timid and precipitate flight to the extreme parts of Italy. This rapid ſucceſs put him, at once, into peaceable poſſeſſion of the capital of the empire; and gave him full opportunity of uſurping whatever degree of power beſt ſuited the views either of his revenge or ambition.

But, inſtead of defiling the city with blood, or aſſuming the ſtate of an abſolute monarch, he aſſembled together ſuch ſenators as were then remaining; addreſſed them with benignity and tenderneſs; and requeſted them, once more, to invite his ſtubborn compeer to enter into a treaty of peace, upon terms of equality; a propoſal that was unhappily declined, either from the fear of Pompey's reſentment at being deſerted; or from a ſuſpicion (moſt ſurely groundleſs) of the ſincerity of Cæſar's declarations [22].

All proſpect of accommodation being now deſperate, he was obliged, even in his own defence, to purſue his flying enemy to the memorable field of battle; where both armies ſtood, for a while, in deep and anxious ſilence, doubting which ſhould ſtrike the firſt blow [23]; and while the eyes of the two noble rivals were overflowing

[22] Εις την Ρωμην ανεστρεψεν, γεγονως εν ημεραις ἑξηκοντα πασης αναιμωτι της Ιταλιας κυριος. επει δε και την πολιν ευρε μαλλον η προσεδοκα καθεστωσαν και των απο βυλης εν αυτη συχνους, τουτοις μεν επιεικη και δημοτικα διελεχθη, παρακαλων αυτους και περι Πομπηϊου αποστελλειν ανδρας επι συμβασεσι πρεπουσας· ὑπηκουσε δ' ὡδεις, ειτε φοβουμενοι Πομπηϊον εγκαλελειμμενον, ειτε νομιζοντες ουχ ὑπ' αυτου Καισαρα φρονειν, αλλ' ευπρεπεια λογων χρησθαι. Plut. in Cæſ. p. 138.

[23] Ὡς δε σφισιν ἑτοιμα παντα ην, επι πολυ και ὡς ανεμενον εν βαθεια σιωπη· μελλοντες ετι και οκνουντες και ες αλληλους αποβλεποντες, ὁποτερος αρξει της μαχης. App. de Bell. Civ. p. 475. The ſame author,

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ing with tears, at the thoughts of the terrible conſequences of ſo fatal a conflict.

The well-known event having left him in full poſſeſſion of the empire over the whole Roman world, the uſe he made of this victory redounded no leſs to his honor, than the bravery by which he obtained it. When Pompey's head was preſented to him, he turned, with grief and horror, from the bloody ſpectacle; he puniſhed his murderers; dedicated a temple to his memory; received his ſcattered adherents, and engaged them to himſelf by every act of kindneſs and beneficence; and, in his letters to his friends at Rome, declared, that the moſt agreeable conſequences of his ſucceſs were, that he was now daily enabled to preſerve great numbers of citizens, who had taken up arms againſt him [24].

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Having totally ſubdued the Pompeian party, he returned to Rome; where he was received with every token of reſpect, that adulation, mixed with fear, could poſſibly ſuggeſt [25]. He was

author, having deſcribed the whole of this dreadful interval with a ſolemnity very ſuitable to ſuch an important occaſion, concludes, Ὧν ενθυμουμενος ικανως, μεταγνοιας τε δυναλης ετι εν τω παροντι ενεπιμπλατο, και ως ισομενος εκεινην την ημεραν των επι γης η πρωτος η τελευταιος, ωκνει τοσηνδε αμφιβολιας αρξαι. και φασιν αυτων ικατερον και δακρυσαι. Id. p. 476.

[24] Πομπηιον μεν και Αχιλλαν εκολασε θανατου της εις Πομπηϊον παρανομιας. App. de Bell. Civ. p. 484. Την δε κεφαλην τε Πομπηϊε προσφερομενην ουκ ὑπεστη, αλλα προσεταξε ταφηναι, και τι αυτη τιμενος βραχυ, προ της πολεως περιτεθει, Νεμεσεως τεμενος εκαλειτο. Id. ib. Εις δε Αλεξανδρειαν επι Πομπηϊω τεθνηκοτι καταχθεις, Θεοδοτου μεν απεγραφη, την Πομπηϊε κεφαλην φερουσα, την δε σφραγιδα δεξαμενος τε ανδρος κατεδακρυσεν· ὁσοι δε των εταιρων αυτε και συνηθων πλανωμενοι μετα την χωραν εαλωκεσαν ὑπο τε βασιλεως, παντας ευεργετησεν και προσηγαγετο. τοις δε φιλοις εις Ρωμην εγραφεν ὁτι της νικης απολαυοι τετο μεγιστον και ηδιστον, το σωζειν τινας αει των συμπολεμηκοτων πολιτων αυτω. Plut. in Cæſ. p. 150.

[25] Ὁ δε Καισαρ εις Ρομην επανηγετο, τα εμφυλια παντα καθαιρων, επι φοβου και δοξης ὁιας αυτος προτος· ὁθεν αυτω τιμαι πασαι, ὁσαι ὑπερ ανθρωπον, αμετρως εις χαριν επενοουντο. App. de Bell. Civ. p. 494. Plutarch has aſcribed many of theſe extravagant compliments to the mere malice of his enemies, who thus endeavoured to expoſe him to the envy of the public: Τιμας δε τας πρωτας Κικερωνος εις την βελην γραψαντος, ως αμωσγεπως ανθρωπινον ην το μεγεθος, ἑτεροι προστιθεντες ὑπερβολας, και διαμιλλωμενοι προς αλληλους, εξεργασαντο και τοις προσταλσις επαχθη τον ανδρα και λυπηρον γενεσθαι, δια τον ογκον και την ατοπιαν των ψηφιζομενων. ὁις ουδεν ἡτον οιονται συναγωνισασθαι των κολακευοντων Καισαρα τας μισυλας, ὁπως ὁτι πλειστας κατ' αυτε προφασεις εχωσι, και μετα μειζονων εγκλημαλων επιχειρειν δοκωσιν. Plut. in Cæſ. p. 159.

faluted

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ſaluted Father of his Country; was created perpetual dictator, and conſul for ten years; his perſon was declared ſacred[26]; he had the power of making war and peace[27]; and all magiſtrates were bound to take an oath, that they would never reverſe any of his decrees[28]. In conferring theſe unconſtitutional favors upon him, the people acted with a policy admirably well adapted to their ſervile ſituation. Still fond of the empty name of liberty, they were deſirous that he ſhould appear to receive them from their free ſuffrages, and govern them under the color of law; well-knowing, at the ſame time, that he was in a condition to exerciſe whatever authority he pleaſed, whether they choſe to conſent to it or not[29].

As far as it was poſſible for a free people thus to diveſt themſelves of the moſt precious rights of nature, they had now transferred them all to Cæſar, and had made him abſolute by the ſanction of the legiſlature. Fortunately, however, for the peace of Rome, he better underſtood the true value of political liberty, than thoſe who had thus ſervilely renounced it. His moderation kept pace with his power. His humanity extorted the admiration and applauſe of the whole nation; and even Cicero was obſerved to be one of the moſt forward in voting him honors, and celebrating his praiſes[30]; though

[26] Ανερρηθη δε και πατηρ πατριδος, και δικτατωρ ες τον ἑαυτου βιον ἠρεθη, και ὑπατος ες δεκα ετη· και το σωμα ἱερος και ασυλος ειναι. App. de Bell. Civ. p. 494. Ου μην αλλα και προς την τυχην τε ανδρος ενκεκλικοιες, και δεδεγμενοι τον χαλινον, και των εμφυλιων πολεμων και κακων αναπνοην ἡγουμενοι την μοναρχιαν, δικταωρα μεν αυτον απεδειξαν δια βιου. τουτο δε ην ὁμολογουμενη μεν τυραννις, τῳ ανυπευθυνῳ της μοναρχιας το ακαταπαυστον προσλαβουσης. Plut. in Cæſ. p. 159.

[27] Πολεμων και ειρηνης κυριον. Dio Caſſ. 42. 20.

[28] Τας αρχας ευθυς καθισαμενας ομνυναι μηδεν των ὑπο Καισαρος ὁριζομενων αὐτιπραξειν. App. de Bell. Civ. p. 494.

[29] Ουχ' ὁτι και αυτος παρ' ἑαυτου ου τουτο λαβων ειχεν, αλλ' ἱνα και εν νομῳ ηδη τινι αυτο ποιειν δοξῃ· ——και ην μεν που και τουτο και πριν επ' ἐκεινῳ, ἁτε και δυναμιν τηλικαυτην ἐχοντι· (τους γουν πολεμους ους επολεμησε παντας ολιγου καθ' ἑαυτον ανειλετο·) ὁμως δ' ουν αυτῳ (πολιται τε γαρ και αυτοτελεις ετι δοκειν ειναι ηθελον) ταυτα τε ὑπηφισαντο, και τα αλλα παντα, ἁ και ακοντων αυτων ἐχειν ἐδυνατο. Dio Caſſ. 42. 20.

[30] Σπανιως εις αγαν θεραπειας ἑαυτα τω Καισαρος κατηει, και πρωτος ην των συναγορευοντων ταις τιμαις, και λεγων αει τι καινον εις τον ανδρα και τα μεγιστα φιλοτιμουμενων. Plut. in Cic. p. 484.

well-known to be of the number of thoſe, who were the moſt envious of his glory. His pardon and munificence were extended to his moſt inveterate enemies; even to thoſe who afterwards became his murderers [31]: inſomuch that the ſenate, ſtricken with the luſtre of virtues ſo truly benevolent and godlike, decreed a temple to Clemency, in honor of his lenity [32]. Theſe are facts, which loudly proclaim the genuine hero; and, ſpite of envy, entitle him to a place among the moſt reſpectable names of antiquity.

Excepting the ſhare he had borne in the civil wars, his conduct was, generally ſpeaking, irreproachable [33]; and even in theſe he was hurried on much more by the violence of a diſtempered age, than by any evil or malevolent inclinations of his own: on the contrary, his very enemies were ready to acknowledge, that, in mercy and equity, he excelled all the other conquerors in thoſe bloody conteſts [34].

[31] Thus immediately after the battle of Pharſalia, πολλοις και των επιφανων αδειαν εδωκεν· ων και Βρυτος ην ὁ κλεινας αυτον ὑστερον, ὑφ' ᾧ λεγεται μη φαινομενῳ μεν αγωνιασαι, σωθεντος δε και παραγενομενου προς αυτον ἡσθηναι διαφεροντως. Plut. in Cæſ. p. 150.—And again, αφηκε πολλους των πεπολεμηκοτων προς αυτον, ενιοις δε και τιμας και αρχας, ὡς Βρυτῳ και Κασσιῳ, προεδωκεν· ἱστρατηγηκει γαρ αμφοτεροις. Ib. p. 159.—"Moderationem clementiamque, cum in administratione, tum in victoria belli civilis "admirabilem exhibuit." Suet. in Cæſ. 75.—"Simultates contra nullos tam graves "excepit unquam, ut non occaſione oblata "libens deponeret." Ib. 73.—"In ulciſcendo natura leniſſimus." Ib. 74. Thus Cicero, to the ſame effect; "Reliquos ampliſſimos viros, et ſibi ipſis, et patriæ reddidit, quorum et frequentiam, et dignitatem "hoc ipſo in conſeſſu videtis." And again, "Vicit is, qui non fortuna inflammaret "odium ſuum, ſed bonitate leniret: nec "qui omnes, quibus iratus eſſet, eoſdem "etiam exilio, aut morte dignos judicaret." Pro Marc. 5 & 10.

[32] Της Επιεικειας ιερον εκ παλαι τροπῳ δοκουσιν χαριστηριον επι τη πραοτητι ψηφισασθαι. Plut. in Cæſ. p. 159. Και πως ἐψηφισαντο πολλους αυτῳ γενεσθαι καθαπερ θεῳ, και κοινον αυτου και Επιεικειας, αλληλοις δεξιωμενων. ουτως ἐδεδοικεσαν μεν ὡς δεσποτην, ευχοντο δε σφισιν επιεικη γενεσθαι. App. de Bell. Civ. p. 494. In which it is obſervable, that this author ſo far differs from Plutarch, as to aſcribe the compliment not ſo much to love, as to fear.

[33] Επει τα γε αλλα των εμφυλιων αὐ πολεμων πειρας ισχυκοτων ανεγκλητον παρειχεν. Plut. in Cæſ. p. 159.

[34] Thus Cicero, ſpeaking of his generoſity in pardoning Marcellus, adds, "Et "cæteros quidem omnes victores bellorum "civilium jam ante æquitate, et miſericordia viceras: hodierno vero die te ipſum "viciſti." Pro Marc. 4.

From

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From the concluſion of this turbulent period, he was ſtill more at leiſure to diſplay the real goodneſs of his diſpoſition; and to give a fuller ſcope to the exerciſe of his political abilities. To ſhew his reliance upon the affections of the people, he refuſed to have a guard round his perſon (the uſual refuge of tyrants), with this manly declaration, "that it was better to die at once, than to live "in perpetual apprehenſion[35]." Safe, as he then thought, under the protection of his own benevolent character, he diſtributed his rewards and honors, according to the reſpective pretenſions of the ſeveral orders of the people; and encouraged the pleaſing hope, that he meant to lay the foundation of his dominion in the hearts of a willing world[36].

He now applied himſelf, with a truly patriotic zeal, to the completion of the great object of his wiſhes; which was to cloſe the wounds of his bleeding country; to reform and new-model the broken conſtitution; and to repair the many injuries it had ſuffered from the late unhappy diviſions: and had not the untractable arrogance of the ariſtocratical faction, alike unfriendly both to regal and popular government, diſconcerted his beſt endeavours, there is every reaſon to believe, that he would have given them a more liberal and rational ſcheme of civil policy, than had ever been known among them ſince the days of Romulus: and have convinced them, that his deſire was "not to command, but to preſide; "not to tyrannize, but to govern[37]."

To

[35] Των φιλων αξιωθηναι αυλον δορυφορεισθαι, και πολλων επι τυτο παρεχοιων ἑαυτους, ουκ υπεμεινεν· ειπων ὡς βελτιον εστιν ἁπαξ αποθανειν η αει προσδοκαν. Plut. in Cæſ. 160.

[36] Την δ' ευνοιαν, ὡς καλλιστον ἑαυτῳ αμα και βεβαιοτατον ἑαυτῳ περιβαλλομενος φυλακτηριον, αυθις ανελαμβανε τον δημον ἑστιασεσι και σιτηρεσιοις, το δε στρατιωτικον, αποικιαις·——των δε δυναλων τοις μεν υπατειας και στρατηγιας εις τυτοις επαγγελλεσθαι, τους δε αλλαις τισιν εξουσιαις και τιμαις παρεμυθεισθαι· πασιν δε ελπιζειν ενεδιδε, μηχανομενος αρχειν ικοντων. Plut. in Cæſ. p. 160.

[37] Dion Caſſius, who ſeems to have taken great pains to preſerve the ſpeeches ſuppoſed to have been made by the ſeveral perſonages whom he introduces into his hiſtory, has put one

The laws, originally confined within the narrow limits of the Twelve Tables, being now increaſed to a very inconvenient magnitude, by the numerous additions of ſucceeding legiſlatures, he propoſed to take a general review of the whole body, and to reduce the moſt uſeful of them, into one conciſe and uniform collection[38]: but the confuſions of the times, and his own premature fate, unhappily rendered this deſign abortive.

Many vacancies having been occaſioned by the late civil wars, among the ſenators and magiſtrates, he greatly augmented their number; though he is charged with having debaſed the dignity of this venerable aſſembly by too large a mixture of Gauls and other foreigners; as well as by reinſtating ſeveral who had been degraded by former cenſors and judges, for bribery[39].

Willing, likewiſe, to keep upon good terms with the people, he indulged the "comitia" with the nomination of half the magiſtrates, the conſuls only excepted; reſerving to himſelf the power of recommending the other half to their favor by a kind of *letters miſſive*[40]; which, at the ſame time that it ſet ſtraiter bounds to the conſtitutional freedom of election, was a tacit acknowledgment of their antient privileges.

one in the mouth of Julius Cæſar, in which he allows him to juſtify his own conduct to the ſenate, in the following remarkable words; αλλ' ετι προτερον αλλως πως εφρινησα, (ωσπερ που και αυτα τα εργα τικμηριοι) νυν δε πολυ μαλλον προθυμησομαι μετα πασης επιεικειας, μα Δι' ου δεισποζειν υμων, αλλα προστατειν· ουδε τυραννευειν, αλλ' ηγεμονευειν. 43. 7.

38 "Jus civile ad certum modum redigere, "atque ex immenſâ diffuſâque legum copiâ "optima quæque et neceſſaria in pauciſſimos conferre libros." Suet. in Cæſ. 44. Livy gives a ſimilar account of the confuſed ſtate of the laws in the ſame age, "Decem tabularum leges perlatæ ſunt: qui "*nunc* quoque, in hoc immenſo aliarum ſuper alias acervatarum legum cumulo, fons "omnis publici privatique eſt juris." 3. 34.

39 "Senatum ſupplevit, patricios adlegit: prætorum, ædilium, queſtorum, minorum etiam magiſtratuum numerum ampliavit: nudatos opere cenſorio, aut ſententia judicum de ambitu condemnatos, reſtituit." Suet. in Cæſ. 41.

40 "Comitia cum populo partitus eſt; ut, "exceptis conſulatus competitoribus, de "cætero numero candidatorum, pro parte "dimidia, quos populos vellet, pronuntiarentur: pro parte altera, quos ipſe ediderat. Et edebat per libellos circum tribus miſſos ſcriptura brevi, *Cæſar dictator illi tribui*. Commendo vobis illum, et "illum, ut veſtro ſuffragio ſuam dignitatem "teneant." Suet. in Cæſ. 41.

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It muſt be confeſſed, that the light in which ſome writers have placed theſe facts rather leſſens the merit of Cæſar's government; but a modern advocate of his honor thinks the whole a miſrepreſentation, no mention being found of them in the letters of Cicero[41]. This, indeed, amounts to no more than a negative reaſon; though it can hardly be imagined, that any groſs abuſes of this nature would have been overlooked by one, who, with all his ſervile adulation, and public profeſſions of reſpect, never neglected any opportunity of expoſing his faults in private, when he could do it without hazard to himſelf. It is moſt likely, therefore, that the miſchiefs ariſing from theſe irregular exertions of power were, originally, of no great conſequence; but were made uſe of afterwards by his enemies as a handle, among others, to juſtify their own conſpiracy[42]; and were then delivered down by themſelves and their partizans, with ſeveral additional aggravations, till they found a place in future hiſtory.

Having no deſire to conceal the failings of Julius Cæſar, or to ſuppreſs any exceptionable parts of his civil regulations, we may, with more confidence, advert to the remainder, which equally prove both the goodneſs of his heart and the ſolidity of his judgment. At the head of theſe ſhould be remembered his very ſtrict and indefatigable attention to the due adminiſtration of public juſtice[43], in reſcuing it from the hands of thoſe, by whom it had been much abuſed[44]; and committing it to the ſenatorial and equeſtrian orders

[41] Hooke's Rom. Hiſt. 10. 2. p. 193.

[42] This ſeems to be the idea of Suetonius himſelf, who ſpeaks of ſeveral ſarcaſms thrown out againſt the new ſenators, in the following terms; "Peregrinis in ſenatum "allectis libellus propoſitus eſt: *Bonum fa-* "*tum. Ne quis ſenatori novo curiam mon-* "*ſtrare velit:* et illa vulgo canebantur:

"Gallos Cæſar in triumphum ducit,
"idem in curiam.
"Galli bracas depoſuerunt, latum cla-
"vum ſumpſerunt."

Suet. in Cæſ. 80.

[43] Jus laborioſiſſime ac ſeveriſſime dixit." Suet. in Cæſ. 42.

[44] Τα δικαστηρια τοις τε βουλευταις και τοις ἱππεσι μονοις επετρεψεν, ὁπως το καθαρωτατον ὁτι μαλιστα αει δικαζοι. προτερον γαρ και εκ του ὁμιλου τινες συνδιεγινωσκον αὐτοις. Dio Caſſ. 43. 25. "Judicia ad duo genera judicum redegit, "equeſtris ordinis ac ſenatorii: tribunos "ærarios, quod erat tertium, ſuſtulit." Suet. in Cæſ. 41.

alone,

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alone, from whoſe rank and education there was, at leaſt, a chance of its being diſpenſed with greater knowledge and impartiality.

Sumptuary Laws.

To reſtrain the luxury and diſſipation of the great and opulent, whoſe effeminate example threatened the utter extinction of that ſpirit of heroiſm, on which the future glory of Rome ſo much depended, he revived the antient ſumptuary laws; enacted ſome new ones; and enforced the obſervance of them all, by keeping a watchful eye over their daily courſe of life[45]. He forbade the uſe of ſedan-chairs, of purple garments, and of jewels, except to perſons of a particular age and ſtation: he ſet guards upon the market, to prevent the ſale of certain articles of intemperance; and carried his ſeverity ſo far, as to command them to be taken away, even when already ſerved up to the table[46].

To the voluptuous devotees of Epicurus, in which that age ſo plentifully abounded[47], ſuch a mortifying diſappointment of their pampered appetites, no doubt, appeared a moſt oppreſſive act of tyranny; and, had it ever been exerciſed in a ſtate better acquainted with the true value of liberty, would have juſtly provoked the clamors of the moſt calm and diſpaſſionate patriotiſm. As therefore it might give offence to the more refined ideas of modern times, to palliate ſo violent an invaſion of domeſtic privacy, we muſt content ourſelves with endeavouring to account for the reaſon of theſe laws,

[45] Τα αναλωμαλα των τι ἐχοντων, επι πλειστον ἐπ' ασωλιας ἐξηγμενα, ουκ εν νομῳ μονον ἐμβριασιν, αλλα και τῳ ἐργῳ ἰσχυρως ἐν φυλακῃ ἐποιησαλο. Dio Caſſ. 43. 25.

[46] "Lecticarum uſum, item conchyliatæ "veſtis, et margaritarum, niſi certis per- "ſonis et ætatibus, perque certos dies ade- "mit. Legem præcipue ſumptuariam ex- "ercuit: diſpoſitis circa macellum cuſto- "dibus, qui opſonia contra vetitum retine- "rent, deportarentque ad ſe, ſubmiſſis "nonnunquam lictoribus atque militibus, "qui, ſi qua cuſtodes fefelliſſent, jam appo- "ſita e triclinio auferrent," Suet. in Cæſ. 43.

[47] Such as we find them deſcribed by the ingenious ſatiriſt;

"Nos numerus ſumus, et fruges conſu- "mere nati;
"Sponſi Penelopes, nebulones, Alcinoi- "que,
"In cute curandæ plus æquo operata ju- "ventus."

Hor. Ep. 1. 2. 27, &c.

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which had their origin in ages much earlier than Julius Cæſar; and were founded in principles peculiar to the Roman conſtitution, even in the meridian of her pureſt freedom.

The antient and plain republicans, deſtitute of thoſe delicate and exquiſite ſenſations which diſtinguiſhed their politer poſterity, were uſed to ſatisfy the ordinary demands of nature by ſuch frugal repaſts, as were moſt conformable to the ſimplicity of their manners, and the tenuity of their fortunes. Thus allowing leſs time to ſenſual indulgences, they had the more left for the works of enterprize; and by conquering their own irregular deſires, were better enabled to ſubdue the world. A few acres, which, with his own manual labor, were ſufficient to afford bread and pulſe for the ſuſtenance of his family, was an eſtate for a general, conſul, or dictator. Even the famous C. Marius, who was ſeven times conſul, having once diſtributed fourteen acres a-piece to his ſoldiers, and hearing that ſeveral of them were diſcontented with ſo ſcanty a portion, exclaimed, with an honeſt ardor, "Let no Roman think that too little, which is enough to "ſupply him with the common neceſſaries of life [48]."

The many wonderful feats of arms wrought by the proweſs of ſuch hardy and penurious ruſtics gave a conſequence to poverty, and made it the moſt honorable mark of diſtinction of every brave and virtuous Roman. To encourage, likewiſe, an univerſal ſpirit of frugality, and to keep all orders and degrees within the due bounds of their patrimonial fortunes, a brand of infamy had been ſet upon prodigality, by the primitive manners of the times, which afterwards found its way into the Twelve Tables, in the ſhape of a poſitive law. By this, if any perſon, though of full age, was ſeen idly ſpending his eſtate, and living beyond the compaſs of his annual income, he

[48] Εκεινος (ſc. Μαριος) επει κατ' ανδρα νειμας δεκα και τεσσαρα πλεθρα γης, εγω πολιον επιζητουτας, Μηδεις, εφη, γινοιτο Ῥωμαιων ολιγην ηγεμονος την τριφειν αρκουσαν. Plut. in Craſſ. p. 250.

was conſidered in the light of an abſolute lunatic; was taken before the prætor, put under the care of guardians, and deprived of the management of his own affairs, till he had recovered from the diſeaſes of imprudence and profuſion[49]. While laboring under this legal diſability, he was not permitted to make a will[50]; all his obligations, alienations, and contracts were annulled (ſuch only excepted, as were made to his own advantage[51]); for, according to the ſentiments of theſe ages, it was a matter of public concern, that no one ſhould make an ill uſe even of his own property[52].

It was certainly no ſmall honor to the policy of old Rome, that laws and manners could be made ſo compatible with each other; but

[49] Thus ſtands the law in the antique garb in which it was dreſſed by the "decemviri;" SI FURIOSUS AUT PRODIGUS EXISTAT, AST EI CUSTOS NEC ESCIT, AGNATORUM GENTILIUMQUE IN EO PECUNIÆVE EJUS POTESTAS ESTO. Tab. 5. in Grav. O. J. p. 288. The following account we likewiſe find in an antient collection; "*Moribus* per "prætorem bonis interdicitur, hoc modo; "QUANDO TUA BONA PATERNA AVITAQUE NEQUITIA TUA DISPERDIS, "LIBEROSQUE TUOS AD EGESTATEM "PERDUCIS, OB EAM REM TIBI EA RE "COMMERCIOQUE INTERDICO." Jul. Pauli Recept. Sent. 3. 4. 7. Several ſubſequent determinations were founded upon the ſame law, which may be very deſerving of attention, as they clearly point out the reaſons whereon the Roman legiſlature thought proper to act in theſe extraordinary caſes; thus, "D. Pius matris querelam de "filiis prodigis admiſit, ut curatorem acci"piant, in hæc verba: *Non eſt novum quoſ*"*dam, etſi mentis ſuæ videbuntur ex ſermoni*"*bus compotes eſſe, tamen ſic tractare bona ad* "*ſe pertinentia, ut, niſi ſubveniatur his, dedu*"*cantur in egeſtatem: eligendus itaque erit* "*qui eos conſilio regat: nam æquum eſt, pro*"*ſpicere nos etiam iis, qui, quod ad bona ipſo*"*rum pertinet, furioſum faciunt exitum.*" D. 26. 5. 12. 2. And again, "Lege Duode"cem Tabularum prodigo interdicitur bono"rum ſuorum adminiſtratio: quod moribus "quidem ab initio introductum eſt. Sed ſo"lent hodie prætores vel præſides, ſi talem "hominem invenerint, qui neque tempus "neque finem expenſarum habet, ſed bona "ſua dilacerando et diſſipando profudit, cu"ratorem ei dare exemplo furioſi: et tam"diu erunt ambo in curatione, quamdiu vel "furioſus ſanitatem, vel ille ſanos mores "receperit: quod ſi evenerit, ipſo jure deſi"nunt eſſe in poteſtate curatorum." D. 27. 10. 1 pr.

[50] "*Prodigus*, cui bonorum ſuorum ad"miniſtratio interdicta eſt, teſtamentum fa"cere non poteſt." I. 2. 12. 2.

[51] "Is cui bonis interdictum eſt, ſtipu"lando ſibi acquirit: tradere vero non "poteſt, vel promittendo obligari: et ideo "nec fidejuſſor pro eo intervenire poterit, "ſicut nec pro furioſo." D. 45. 1. 6.

[52] "Expedit reipublicæ, ne ſua re quis "male utatur." I. 1. 8. 2.

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it ſoon became impoſſible to preſerve their ſpirit, when the foundations once approached towards a ſtate of decay. The appetite for ſenſual enjoyments naturally increaſed with dominion and riches[53]: gluttony advanced with rapid ſteps, and, upon public holidays eſpecially, ſeems to have been indulged with a degree of exceſs, very unbecoming the ſolemnity of thoſe ſacred occaſions. From ſuch cauſes aroſe thoſe *ſumptuary laws*[54], ſo plauſible in theory, however difficult to be reduced to practice.

A. U. C. 571.

The firſt of theſe was the *Orcian Law*, to limit the charge of entertainments, and the number of gueſts; about twenty years after which the ſenate paſſed a decree, to oblige the chief perſons of the city, by a formal oath, not to expend more than a certain ſum in the Megalenſian Games. Upon this was immediately founded the *Fannian Law*, ſo called from C. Fannius Strabo, then conſul, which extended the prohibition to various other feſtivals[55]. The operation of this however being limited only to the walls of Rome, the *Didian Law* was made, to include all Italy under the ſame reſtrictions; and to inflict penalties, not only upon the maſter of the entertainment, but likewiſe upon all that were preſent. In due courſe of time followed the *Licinian Law*, enacted by the conſul P. Licinius

A. U. C. 592.

A. U. C. 610.

A. U. C. 657.

[53] Thus ſays the glutton, in excuſe for his own intemperance;

" Ego vectigalia magna,
" Divitiaſque habeo tribus amplas regi-
" bus." Hor. Sat. 2. 2. 100.

[54] Roſ. Ant. Rom. 8. 13.

[55] The following account of the origin of theſe laws is to be found in a celebrated antiquarian; " Legi adeo nuper in Capitonis " Atei conjectaneis ſenatus decretum vetus " C. Fannio et M. Valerio Meſſala Coſſ. " factum; in quo jubentur principes civi- " tatis, qui Ludis Megalenſibus antiquo ritu " mutuitarent, id eſt, mutua inter ſeſe con- " vivia agitarent, jurare apud conſules, ver- " bis conceptis, non amplius in ſingulas cœ- " nas ſumptus eſſe facturos, quam centenos " vicenoſque æris, præter olus et far et " vinum; neque vino alienigeno ſed patrio " uſuros; neque argenti in convivio plus " pondo, quam libras centum illaturos. " Sed poſt id ſenatuſconſultum Lex Fannia " lata eſt, quæ ludis Romanis, item ludis " plebeiis et ſaturnalibus, et aliis quibuſdam " diebus, in ſingulos dies centenos æris in- " ſumi conceſſit, decemque aliis diebus in " ſingulis menſibus tricenos; cæteris autem " diebus denos." Aul. Gell. 2. 24.

Craſſus,

Craſſus, which granted ſeveral extraordinary indulgences upon nuptials, and certain other feaſts, but enjoined the uſe of ſalted or dried fleſh, and ſuch like coarſe fare, upon common days; though allowing, at all times, a promiſcuous and indefinite enjoyment of fruits, and other vegetable productions of the earth [55].

Such were the very ſingular and curious proviſions of the Roman legiſlature, to ſtop the current of luxury, and diſcourage extravagance. Every oſtentatious expence, beyond the ordinary bounds of domeſtic œconomy, was conſidered as deſtructive of the true national character, and puniſhed with different degrees of rigor, as far even as degradation from that rank which the offender bore in the ſtate. Thus Rufinus, an anceſtor of Sylla, and a perſon of conſular dignity, was expelled the ſenate, for having in his houſe a larger quantity of wrought plate than was allowed by law; a puniſhment that reduced his deſcendents to obſcurity for ſeveral generations. Sylla, therefore, returning from his African expedition, in all the pride of victory, was reproached by an honeſt and primitive Roman, for ſuch a vain-glorious diſplay of wealth, as was wholly inconſiſtent with his native indigence. For though the national innocence and ſimplicity had been long upon the decline, it was ſtill eſteemed not leſs

[55] Thus, ſays the ſame author; "Lex "deinde Licinia rogata eſt; quæ cum certis "diebus, ſicuti Fannia, centenos æris im- "pendi permiſiſſet, nuptiis ducenos indul- "ſit; cæteriſque diebus ſtatuit æris trice- "nos; cum et carnis aridæ et ſalſamenti "certa pondera in ſingulos dies conſtituerit: "ſi quicquam eſſet natum e terra, vite, ar- "bore; promiſcue atque indefinite largita "eſt." Id. ib. It is ſubmitted to the judgment of the claſſical reader, whether the foregoing laws may not throw ſome additional beauty upon the character of the honeſt Oſellus; whom we find ſolacing himſelf with the conſideration, that he had never, *daringly* and wilfully, deviated from that ſtyle of life preſcribed by the eſtabliſhed rules of the conſtitution; but had always conformed to the precepts of the Licinian Law;

"Non ego, narrantem, *temere* edi, luce "profeſta,
"Quidquam præter *olus, fumoſæ cum pede* "*pernæ*;"

regaling himſelf, however, as occaſion ſerved, with a deſert out of his own garden;

"Tum penſilis uva ſecundas,
"Et nux ornabat menſas, cum duplice "ſicu." Hor. Sat. 2. 2. 116, &c.

infamous

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infamous to depart from a ſtate of hereditary poverty, than to ſquander an hereditary fortune [57].

It is not improbable that the ſeverity of this rebuke produced its full effect upon the mind of the dictator, and ſuggeſted to him the expediency of enacting another law, to revive, and give new force to, the preceeding; which, though of ſo very recent a date, were already antiquated, and overwhelmed in the corruptions of an abandoned age [58]. This was ſucceeded by ſome others of leſs note and conſequence, long after the introduction of the imperial government; till the emperors, being degenerated into monſters of voluptuouſneſs and brutality, were no longer ſolicitous to check the growth of a vice, of which themſelves were the moſt egregious examples.

A. U. C. 672.

Laws of this kind, thus immediately levelled againſt the ruling paſſions of a profligate world, though ſtrongly revolting againſt the notions of Britiſh liberty, are very proper and uſeful objects of our political ſpeculations; we have therefore paid them a more particular attention on this occaſion, not only as they exhibit a ſtriking picture of the character of thoſe times; but likewiſe as they ſuffi-

57 Των δε προγονων αυλις λεγουσι Ῥουφινον υπατευσαι· και τουτῳ δι της τιμην επιφανεστεραν γενεσθαι την ατιμιαν. ευρεθη γαρ αργυρια κοιλα κεκλημενος υπερ δεκα λιτρας, τω νομω μη διδους· επι τουτῳ δε της βουλης εξεπεσεν. οι δε μετ' εκεινον ηδη ταπεινα πρατ[ι]οντες διετελεσεν· αυτος τε Συλλας εν ηκ αφθονοις ετραφη τοις πατρῳοις. γενομενος δε μειρακιον, ωκει παρ' ετεροις, ενοικιον η πολυ τιλων, ως υστερον ανειδιζετο, παρ' αξιαν ευτυχειν δοκων. σεμνυνομενῳ μεν γαρ αυλῳ, και μεγαληγορουντι μετα την εν Λιβυῃ θριαμβον, λεγεται τις ειπειν των καλων τε και αγαθων ανδρων, και πως αν εις συ χρηστος, ος, τω παιρος σοι μηδεν εγκαλαλιποντος, τοσαυτα κεκληκαι; και γαρ ηκ εστι των βιον εν ηδεσιν ορθιοις και καθαροις μενοντων, αλλ' εγκεκλικοτων και παραδεδεγμενων τρυφης και πολυτελειας ζηλον. εις ισον ομως ονειδος ετιθετο τους υπαρχουσαν ευποριαν απολεσαντας, και τους πατρῳαν μη διαφυλαξαντας. Plut. in Syl. p. 44.

58 The words of the Latin hiſtorian are extremely remarkable; "Poſtea L. Sylla "dictator, cum legibus iſtis ſitu atque ſenio "obliteratis plerique in patrimoniis amplis "helluarentur, et familiam pecuniamque "ſuam prandiorum gurgitibus proluiſſent, "legem ad populum tulit, qua cautum eſt, "ut kalendis, idibus, noniſque, diebus lu-"dorum, et feriis quibuſdam ſolemnibus "ſeſtertios tricenos in cænam inſumere jus "poteſtaſque eſſet; cæteris autem aliis die-"bus non amplius ternos." Aul. Gell. 2. 24.

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iently vindicate the conduct of this diſcerning politician, for his ſtrictneſs in the execution of them.

The age of Cæſar was not the age of abſtemiouſneſs and mortification; for it would be difficult to ſay, whether the other nations of the earth were greater ſlaves to the Roman power, than the Romans were to their own pleaſures. The emperor himſelf was not wholly exempt from many of the ſame blemiſhes; though they had not ſo far ſubdued the nobleneſs of his nature, as to prevent him from foreſeeing the fatal conſequences of them to the commonwealth. Upon this ground we may fairly account for his ſolicitude to obviate thoſe evils which portended its immediate ruin. As Rome owed the whole of her glory and good fortune to the ſtrength of her arms, upon that only could ſhe depend for her future exiſtence. Being at no time a commercial nation, ſhe was without thoſe reſources which lie in the manual labor of the inhabitants; and which keep the ſpirit of induſtry in perpetual action, at the ſame time that they plentifully ſupply the demands of luxury. The neighbouring country did not even afford a ſufficiency of corn for the daily conſumption; ſo that the poor would often have been in danger of ſtarving in the midſt of their triumphs, had they not been maintained either by the generoſity of rich individuals, or of the government itſelf. A debauched and effeminate courſe of life, as it diverted the ſtream of charity, as it debaſed the mind, and enervated the body, was, of all others, the moſt repugnant to the genius of a military people. Times like theſe required a vigorous exertion of the executive power. The conduct, therefore, of Cæſar was fully juſtified, as well by the laws then in being, as by the critical exigencies of the age; and affords the ſtrongeſt preſumptive proof, that he was actuated by a ſincere and earneſt zeal for the true intereſt and honor of his country.

Luxury, even in a commercial ſtate, is no longer tolerable, than while it preſerves the juſt balance between induſtry and riches. But

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when it once exceeds the due bounds of private œconomy; when prodigality becomes faſhionable, and to be immerſed in debt, is eſteemed a criterion of politeneſs; then begin the ruin and miſery of thoſe noble and reſpectable families, whoſe generous and independent ſpirit is the ſureſt ſupport of a free conſtitution. The wealth of the nation then flows in a new channel: is engroſſed into the hands of knaves and uſurers, a ſwarm of peſtilential vermin, generated from the ſink of avarice, extortion, and infamy; who, without blood, virtue, or education, ſucceed, in all the pride of their native ignorance and vulgarity, to the eſtates of their ſuperiors; in the loweſt ſervility of imitation adopting their corrupt manners, and gradually diffuſing the ſame infection through every order of the people; till, loſt to all hopes of retrieving their exhauſted fortunes, they grow negligent or deſperate; and either fall an eaſy prey to their foreign enemies, or become ſlaves to their domeſtic tyrants.

Such was the abject ſtate of this queen of nations in theſe memorable ages[59]: and happy would it have been, had the fate of ſuch a vaſt and once flouriſhing empire, thus brought to decay by vice and profuſion, operated as a warning to ſucceeding generations. The ſupreme ruler, therefore, who by his authority, and much more by his example, endeavours to confine his ſubjects within the reaſonable limits of their own fortunes; who encourages frugality without covetouſneſs, and induſtry without penury; contributes more to the glory of his own reign, and to the ſolid happineſs of his country, than by adding dominion to dominion, and making every quarter of the globe tremble with the echo of his name.

Though a profeſſed enemy to domeſtic luxury, the ideas of Cæſar were always full of expence and magnificence, whenever they could

[59] Thus we find it deſcribed by Plutarch; Επισφαλεςατα δ' ἡ Ῥωμη προς μεταβολην ειχε δια την εν ταις θσιαις ανωμαλιαν, των μεν εν δοξῃ μαλιςα και φρονημαςι κατεπῆωχεμενων εις θεαῖρα και δειπνα και φιλαρχιας και οικοδομιας, των δε πλειςων εις αγενεις και ταπεινους συνερρῦηκοῖων ανθρωπους· ὡςε μικρας ῥοπης δεισθαι τα πραγμαῖα, και παῖδος ειναι τον πολεμησαῖος εκςησαι την πολιτειαν, αυτην ὑφ' αὑτης νοσθσαν. In Cic. p. 451.

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promote the honor of the public. Well appriſed, therefore, of the numerous advantages of external grandeur in the principal ſeat of empire, and how powerfully ſhow and ſplendor ſtrike the minds, and impoſe upon the imaginations, of ſtrangers; he liberally beſtowed his wealth in improving and decorating the city of Rome, ſo as to make it an object both of curioſity and veneration, to all dependent or foreign nations. Neither was he leſs aſſiduous in extending his dominions, and ſecuring their tranquillity[60]. To theſe munificent and ornamental virtues of the prince, he added the polite and attractive accompliſhments of the gentleman and the ſcholar; among which ought ever to be remembered, with univerſal gratitude, his reformation of the kalendar; a ſolid and laſting ſpecimen of his good ſenſe and penetration, that has deſervedly given him one of the foremoſt ſeats upon the bench of philoſophy, and will continue a public benefit to the world to the lateſt poſterity[61].

A regular ſeries of political improvements, purſued with ſuch warmth and perſeverance, is not to be aſcribed to the ſudden ſallies of pomp and oſtentation, as if deſigned for no better purpoſe, than to diſguiſe ambition, and palliate deſpotiſm; but has a perfect right to be conſidered as the deliberate reſult of a long and mature reflexion; as the ſuggeſtion of an ardent and patriotic compaſſion for the deplorable ſtate of his declining country. So careful likewiſe was Cæſar in every thing that concerned the public welfare, that he formed no reſolution of conſequence without firſt aſking the advice of the ſenate; and therefore, though ſeveral of his laws

[60] "Jam de ornandâ inſtruendâque urbe, "item de tuendo ampliandoque imperio, "plura ac majora in dies deſtinabat." Suet. in Cæſ. 44. Many of the particulars are enumerated by Plut. in Cæſ. p. 160 & 161; and likewiſe by Dio Caſſ. 43. 22. who, as if tired with a long and ſpecial detail, concludes with ſaying, Ὧν ἐαν τις τον ἀριθμον γραψαι ἐθελησῃ, ὀχλον αν τῃ συγγραφῃ, ουδ' ἀληθη ἰσως, παρασχοι. παντα γαρ τα τοιαυτα ἐπι το μειζον αι, κομπουται. τουτο μεν ουν και ἐπι των ἀλλων των ὁμοιων των ἐπειλημμενων ἐασω, πλην ει μη τι σαφες μοι δοξειεν ἀναγκαιον εἰπειν εἰναι.

[61] Ἡ δε του ἡμερολογιου διαθεσις, και διορθωσις της περι τον χρονον ἀνωμαλιας, φιλοσοφηθεισα χαριεντως ὑπ' αὐτου, και τελος λαβουσα, γλαφυρωτατην παρεισχε χρειαν. Plut. in Cæſ. p. 161. Suet. in Cæſ. 40. Dio Caſſ. 43. 26.

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carry upon the face of them a tincture of ſeverity, they were amply juſtified by every ſanction, that the concurrence of ſo venerable an aſſembly could poſſibly give them [62].

The liberality of Cæſar's mind was in nothing more conſpicuous than in the gentleneſs of his carriage to all perſons of diſtinguiſhed merit, without reſpect of party. Senſible of the many benefits to be derived from their abilities and advice, he ſpared no pains to overcome their prejudices, and by every inſtance of condeſcenſion to give them favorable ideas of his adminiſtration. But the moſt ſignal inſtances of his friendſhip were ſhewn to Cicero; who, though irreconcileable in ſecret, being flattered by the advances of ſo great a man, paid him every mark of reſpect in public, and affected to be convinced of the ſincerity of his intention to reſtore the conſtitution [63]. He even went ſo far as to draw up a plan for the reſettlement of the government, but ſoon ſuppreſſed it without publication, out of deference to the criticiſms of his too ſcrupulous friends [64].

It muſt be confeſſed, that the traces of this deſign are rather obſcure, and only to be collected from ſlight and diſtant hints, thrown out in his epiſtles to his moſt intimate correſpondents; therefore a more exact account of them cannot now be expected. We have only to lament the loſs of any production of ſo able a ſtateſman upon ſuch an intereſting ſubject [65].

[62] Και ταυτα μεντοι, τα τε αλλα ὁσα ὑπερ του κοινου εβουλευετο, ουτ' ιδιογνωμων ουτ' ιδιοβουλων επραττεν, αλλα παντα δη παντως τοις πρωτοις της βουλης, εγι δ' ὁτι και παση αυτη, επικοινου. Και παρα τουτο ουχ ἡκιστα, καιτοι τραχυτερον τινα νομοθετησας, ὁμως ηρεσε σφισι· και επι μεν τουτοις και επαινον ελαμβανεν. Dio Caſſ. 43. 27.

[63] Thus, in his letter to Servilius Iſauricus, he obſerves; "Sperare videor, Cæſari, "collegæ noſtro, fore curæ, et eſſe, ut habeamus aliquam rempublicam, cujus con"ſiliis magni referebat te intereſſe." Ep. Fam. 13. 68.

[64] To this he is ſuppoſed to allude in an epiſtle to his friend Atticus; "Epiſtolam ad "Cæſarem mitti video tibi placere. Quid "quæris? mihi quoque hoc idem maxime "placuit, et eo magis, quod nihil eſt in ea "niſi optimi civis; ſed ita optimi, ut tempora, quibus parere omnes πολιτικοι præcipiunt. Sed ſcis ita nobis eſſe viſum, ut iſti "ante legerent. Tu igitur id curabis. Sed, "niſi plane iis intelliges placere, mittenda "non eſt. Id autem utrum illi ſentiant, "anne ſimulent, tu intelliges. Mihi ſimulatio pro repudiatione fuerit." Cic. ad Att. 12. 51.

[65] The reader will find ſome further obſervations upon it in Middleton's Life of Cicero, § 8. and Hooke's Rom. Hiſt. 10. 10.

This loſs, however, is in ſome degree compenſated by other highly valuable remains of Salluſt; a writer not leſs celebrated for his political than his hiſtorical abilities, who had borne the high office of prætor [66], and for ſeveral years had lived upon a footing of the greateſt confidence with Cæſar himſelf. Theſe treaſures are contained in two epiſtles, in which he enters deeply and ſenſibly into the various cauſes of the public calamities, and propoſes many ſeaſonable and liberal regulations, to rectify the diſorders in which the ſtate was involved [67].

To deliver this diſeaſed and debilitated conſtitution from the complicated miſeries under which it then lay expiring, certainly required no ſmall effort of power; but ſuch a power, as was far from incompatible with the rights of nature and civil liberty. While Cæſar's mind was occupied by theſe truly noble and beneficent deſigns, his enemies, who ſhrunk from the luſtre of his ſuperior abilities, were indefatigable in their endeavours to ſet him in the moſt odious point of view in the eyes of the people, by irritating their paſſions with a report, that he affected the long-proſcribed and deteſted title of King [68]. Well knowing the magic influence of inveterate prejudices, they flattered themſelves, that the very ſuggeſtion of ſuch an attempt would be an ample juſtification of their

[66] Dio Caſſ. 42. 52.

[67] Theſe are generally called Orations; though from the free and confidential ſtyle in which they are written, and particularly from what the author ſays of them himſelf, they ſhould more properly be named Epiſtles. "Forſitan, imperator *perlectis litteris* deſi-" deres," &c. Ep. 1. We now find them tranſlated, or rather paraphraſed, by Mr. Hooke, with ſeveral uſeful notes and obſervations. Rom. Hiſt. vol. 4. p. 227, & ſeq. They are extremely precious relics of antiquity, but being always printed among the fragments of that author, have been long overlooked; and are not yet ſo well known as they deſerve, by all curious ſearchers after hiſtorical anecdotes.

[68] Το δε εμφανες μαλιστα μισος και θανατηφορον επ' αυτον ο της βασιλειας ερως εξειργασατο, τοις μεν πολλοις αιτια σωζη, τοις δε υπνωλοις παλαι, προφασις συνπεπεγατη γινομενη. Plut. in Cæſ. p. 162: Εϊλανθα ουν αυτου ουδεν, ουδεν ετι ενδοιαζως οι επιβουλευοντες οι επρασσον· αλλ' οπως δη και τοις πανυ φιλοις εν μισει γενηται, αλλα τε επι διαβολη αυτου εποιουν, και τελος βασιλεα αυτον προσηγορευον, και πολυ τουτο τονομα και καϊα σφας διωθρυλλουν. Dio Caſſ. 44. 9.

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own baſeneſs and ingratitude; and inſtead of branding them with the odious appellations of traitors and aſſaſſins, would exalt them to the dignity of heroes and patriots [69].

The want of authentic records, concerning ſome very important tranſactions of this intereſting period, is a misfortune that can never be too much lamented. The two celebrated inſtances, upon which the charge of Cæſar's aſpiring to the royal diadem was founded, were accompanied, even then, with ſo many obſcure and ambiguous circumſtances, that it may fairly be queſtioned whether they were, at any time, properly underſtood; and, of courſe, gave greater ſcope to his adverſaries to miſapply them, in whatever manner was moſt likely to promote the ſucceſs of their own machinations. The generality of hiſtorians of the two centuries immediately ſucceeding (as a learned countryman of our own has very judiciouſly obſerved [70]) "evidently took their accounts from Pompeian memoirs," from writers who had an apparent intereſt in vilifying his memory; while, on the other ſide, his friends were either totally ſilent in his defence, or the envious hand of time has deprived us of their teſtimony. Thus the mercileſs tongue of malice had effectually ſilenced the ſober voice of truth; and proſtituted the ſacred and adorable name of liberty, to the baſeſt and moſt rancorous purpoſes of oppoſition, faction, and murder.

By length of time the ſtain is become almoſt indelible; and yet, the ſame facts which have generally been adduced in ſupport of the accuſation, may as fairly be uſed to maintain the direct reverſe of that concluſion. Cæſar had too great a ſoul to be a hypocrite: what he

[69] The malice of the conſpirators is thus beautifully deſcribed by the Greek hiſtorian; Οιτρος δε τισιν αλιτηριωδης, φθονῳ τε του προηκοντος, και μισει του προλειμμενου σφων, προσπιτνων, εκεινον τε ανομως απεκτειναν, καινον ανοσιου δοξης ονομα προσλαβωσι, και τα ψηφισθεντα διασκεδασι· τασεις τε αυθις εξ ὁμονοιας, και πολεμους εμφυλιους τοις Ρωμαιοις παρασκευασιν. ολιγου μεν γαρ, καθαιρεται τε τυραννος Καισαρος και ελευθεροῦται του δημου γεγονεναι· το δ' αληθες, εκεινῳ τε ασεβως επεβουλευσαν, και την πολιν ορθως ηδη πολιτευομενην ετρασιασαν. Dio Caſſ. 44. 1.

[70] Hooke's Rom. Hiſt. vol. 4. p. 24.

would

would highly, that would he reſolutely. He ſcorned to conceal the aims of his ambition; but boldly declared, "thus far it ſhall go, "and no farther." To power he undoubtedly aſpired, and power he obtained. All that could be conveyed by the unlimited title of Perpetual Dictator was his own[71]. It would argue, therefore, a littleneſs of mind, the fartheſt from his true character, to ſuppoſe him anxious about ſo childiſh a bauble as a royal crown, which could add nothing to his real conſequence; which had been the univerſal object of dread and deteſtation for the laſt five centuries; which would have interrupted the enjoyment of that high authority he then actually exerciſed; and have defeated the many beneficial effects of it to his country, which he then had in contemplation.

Though he has been ſo frequently charged with an inſatiable thirſt after ſovereign power, there is good reaſon to believe, that he incurred more envy from the indiſcreet flattery of the ſenate, than from his own actual ambition. He was placed in ſo critical and difficult a ſituation, that it became no leſs dangerous to refuſe honors when offered, than to aſſume them when withheld[72]. When firſt nominated to the perpetual dictatorſhip, it is much doubted whether he accepted that title with a good will[73]; and ſo circumſpect does he appear to have been, at all times, in the exerciſe of

[71] Ου μην αλλα και περος την τυχην τε ανδρος (ſc. Cæſaris) εγκεκλικοιης, και διδυγμενοι τον χαλινον, και των εμφυλιων πολεμων και κακων απαυτων ηγημενοι την μοναρχιαν, διαταλωρα μεν αυτον απεδειξαν δια βιου. τουτο δε ην ομολογουμενη μεν τυραννις, τω ανυπευθυνω της μοναρχιας το απαναπαυσον προσλαβουσης. Plut. in Cæſ. p. 159.

[72] The Greek hiſtorian has left us the following obſervations; Ου γαρ δη και αιτιον παλιν το επιφθονον εκλησαιτο, πλην καθ' ὁσον αυτοι οι βουλευται ταις τε παιστησι και ταις υπερβολαις των τιμων εξαραιης τε αυτον και φυσησαιης, ωκιλλε επ' αυταις εκεινοις και εμεμφοιτο και διεβαλλον, ως ηδεως τι σφας λαβοιεν, και ογκηροτερον απ' αυτων ζωιεν. ετι μεν γαρ ὁτι και ὁ Καισαρ ημαρτε, δικαμενος τε τινα των ψηφισθεντων οι, και πιστευσας οιος αυτων αξιουσθαι· πλειον δε ὁμως εκεινοι, οι τινες αρξαμενοι τιμαν αυτον ως και αξιον, προηγαγον ες αιτιαν ὁις εψηφιζοντο. ου γαρ διωθεισθαι ραιδια αυτα στελλεται, μη και υπερφρονειν νομισθειη· ουτ' αν, λαμβανων, ασφαλης ειναι ηδυναιτο. Dio Caſſ. 44. 3.

[73] Thus, among the other honors then offered, are mentioned, "Ad hæc pater ipſe "patriæ, Perpetuuſque Dictator, *dubium an* "*ipſo volente*, oblata pro roſtris ab Antonio "conſule regni inſignia." Flor. 3. 2.

his

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his authority, that his greateſt adverſaries heſitated, whether they ſhould venture to ſtigmatiſe it with the name of tyranny[74].

But ſuppoſing, for a moment, that Cæſar, with a mind full of theſe beneficent intentions, had, in fact, expreſſed a deſire to gratify his vanity with the outward ſplendor of majeſty; I ſhall, even then, make no ſcruple of aſſerting, that, how tremendouſly ſoever the word Monarch may chance to ſound in the ears of faſtidious republicans, there is no ſuch natural malignity in a crown, as muſt of neceſſity transform every wearer of it into a tyrant, or degrade every man into a monſter.

Some excuſe indeed may be made for him, upon the natural principle of ſelf-preſervation. He had raiſed himſelf, by the ſuperiority of his arms, to the higheſt pinacle of earthly grandeur, and had now no other alternative left, but to be either Cæſar or Nothing. It was incumbent upon him, either to ſhelter himſelf within the fortreſs of ſovereign authority for the remainder of his days, or fall at once from that lofty precipice into certain contempt and perdition. He had ſufficient warning of theſe conſequences from the licentious clamors of the ſoldiers after his triumph; who openly provoked him either to reſign his power, and ſubmit to the public cenſure; or to retain it, and live in ſecurity[75]. He bore the rebuke like a philoſopher[76]; but prudently choſe that alternative, which many a more ſcrupulous man would probably have done under the like circumſtances[77].

But,

[74] Ἡ Καισαρος αρχη, συνισαμενη μεν ουκ ολιγα τοις εναντιουμενοις πραγματα παρεισχεν. δεξαμενος δε και κρατηθεισιν ονομα και δοκησις εφανη μονον, εργον δ' απ' αυτης ουδεν ωμον ουδε τυραννικον υπηρξεν. Plut. in Paral. inter Dion. & Brut. p. 273.

[75] Αν μεν καλως ποιησῃς, κολασθησῃ, αν δε κακως, βασιλευσεις. Τουτο δε αυτοις εβουλετο δηλουν, ὁτι αν μεν αποδῳ τῳ δημῳ την αυτονομιαν (ὁπερ που δικαιον νομιζον ειναι) και κριθησεται εφ' οις εξων των νομων εργασατο, και δικην ὑφιξει· αν δε τη δυναστεια εμμεινῃ (ὁπερ που αδικουντος εργον ην) μοναρχησει. Dio. Caſſ. 43. 20.

[76] Ου μεντοι εκεινος ηχθετο ταυτα αυτων λεγοντων, αλλα και φασιν εχαιρεν, ὁτι τοσαυτη προς αυτον παῤῥησια, πλην τουτου μη αν οργισθηναι ποτε επ' αυτῃ, εχρωντο. Id. ib.

[77] Whatever may be wanting to complete the juſtification of Cæſar's conduct upon this trying

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But, in truth, the ſtate was now advanced to the higheſt paroxyſm of its frenzy; and ſome potent medicine was immediately neceſſary to reſtore it to its former ſanity. While the balance of contention remained ſo exactly poiſed between the oppoſite factions; while there exiſted ſo many equal pretenders to the ſovereign power; it was in vain to expect any ſettled plan of government at all. The only forlorn hope of this divided nation now depended upon that perilous criſis, when one more fortunate warrior ſhould effectually ſubdue all the reſt of his rivals; ſhould be in a condition to oblige them to yield to his ſuperior good fortune, and to bring them all within the pale of his own dominion.

That criſis was now arrived. Many indeed were bold enough to affirm, that the diſtracted ſtate of the commonwealth was incurable without ſuch a revolution; and had before fixed their eyes upon Pompey, as one who was likely to govern with a gentler ſway; and who, with an affected humility, declined the compliment, though he was then privately exerting his utmoſt efforts to be declared perpetual dictator. But, whoever was ſingled out by the choice of the reſpective parties, the wiſeſt and moſt temperate of both wiſhed that it might end in nothing worſe than monarchy [78]. Pompey himſelf, after the battle of Pharſalia, in a con-

trying occaſion, the reader will find amply ſupplied in a late very able and ingenious defence of it by Mr. Hooke. Rom. Hiſt. 10. 11.

[78] The corrupt ſtate of theſe times is thus deſcribed by Plutarch, in the following emphatical terms; Λαμβανει προφασις (ſc. Cæſar) τας μεν αυτε Πομπηϊε, τας δε των καιρων ενδιδοντων, και της εν Ρωμη παροπολιτειας, δι' ην οι μεν αρχας μετιοντες, εν μεσω θεμενοι τραπεζας, εδικαζον ανοισχυντως τα φληθη, κατηει δε ὁ δημος εμμισθος, ου ψηφους υπερ τε δικαιε, αλλα τοξους και ξιφεσι και σφενδοναις αμιλλωμενος, αιματι δε και νεκρος πολλακις αισχυναβις το βημα διεκριθησαν, ει αναρχια τυραννον, ωσπερ ακυβερνητον ὑποφερομενην απολωτοβις· ωστε τους μεν εχοβας αγαπαν ει προς μηδεν ανβιους χειρος αλλα μοναρχιαν εκ τοιαυτης παραφρεσυνης και τοσυτε κλυδωνος εκπεσυσαν τα πραγματα. πολλοι δε ησαν οι και λεγειν τ μεσω τολμωβις ὑδε, ωλην ὑπο μοναρχιας ανηκεσον ειναι την πολιτειαν, και το φαρμακον τυτο χρηναι τε περιβαλειν των ιατρων ανασχισθαι προσφεροβος· ὑποδυλωβις τοις Πομπηϊον. Plut. in Cæſ. p. 131.

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ference with the philoſopher Cratippus at Mitylene, inſiſted upon the neceſſity of committing the government to the hands of a ſingle perſon, on account of the perverſe uſe that had long been made of republican liberty [79].

In conformity to the ſame idea, a very diſcerning writer, who was far from being partial to the Cæſarean cauſe, has declared his opinion, that "however flattering a popular government may appear "in the eyes of the viſionary advocates of natural equality, it has "been found, by repeated experience, to contain no properties "really correſpondent to its name. Monarchy, on the contrary, "terrible as it may be to the ear, is not without its advantages to "civil ſociety. That, as real virtue comes to the ſhare of but few, "it is leſs difficult to find it in one, than in a multitude: and even "at worſt, ſhould an empire fall into the hands of a ſingle tyrant, "he is ſtill preferable to a number who are equally bad; of which "truths every nation of the world has afforded very plentiful ex-"amples [80]."

Had therefore a monarchical eſtabliſhment then taken place, by the free and univerſal conſent of the people, it might have been productive of many very ſalutary conſequences. A new ſyſtem of this kind, equally remote from the extremes of regal deſpotiſm and republican licentiouſneſs; amicably introduced; guarded by wiſe laws, and erected upon a ſolid and well-prepared foundation; might have appeaſed the tumults of contending factions, and have reſtored

79 Τον δε (ſc. Πομπηϊον) αποφαινεσθαι ὅτι τοις πραγμασιν ηδη μοναρχιας εδει δια την κακοπολιτειαν. Plut. in Pomp. p. 507.

80 Δημοκρατια γαρ ονομα ευσχημον εχει, και τινα ισομοιριαν πασιν εκ της ισονομιας φερειν δοκει, εν δε δη τοις εργοις ελεγχεται μηδεν ὁμολογουσα τῳ προσρηματι· και τουναντιον ἡ μοναρχια, δυσχερες μεν ακουσται, χρησιμωταλον δε εμπολιτευσασθαι, εστι. ξαον τι γαρ ειναι τινα χρηστον ἡ πολλους ευρειν. αν γε και τουτο χαλεπον τισιν ειναι δοκῃ, πασα αναγκη εκεινο γε αδυναλον ὁμολογηθηναι ειναι. ου γαρ προσηκει τοις πολλοις αρξιν κτασθαι. ει δ' ουν και φαυλος τις αυταρχησειεν, αλλα του γε πληθους των ὁμοιων αειξιωτερος εστιν· ὡσπερ που και τα εργα τα τε των Ελληνων και τα των βαρβαρων, των τε Ρωμαιων αυτων, τεκμηριοι. Dio Caſſ. 44. 2.

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to the people as large a proportion of their antient liberties, as they were capable of applying to a proper uſe.

But whatever ſchemes of policy might have been in his further meditation, they were at once rendered abortive by that fatal ſtroke, which deprived the Roman world of its brighteſt ornament; and while it left his admirers to lament the loſs of thoſe benefits, which a juſt ſenſe of the goodneſs of his heart encouraged them to expect, it gave equal room to the malevolence of his detractors to queſtion the ſincerity of his intentions, becauſe he was thus unfortunately prevented from bringing them to maturity.

This melancholy event may ſerve likewiſe as a ſignal inſtance, how eaſily pride and revenge can aſſume the maſk of virtue and patriotiſm. All the conſpirators, one alone excepted, hated Cæſar, not the tyrant[81]; but in Brutus, while we condemn the aſſaſſin, we muſt venerate the man. A pure and virtuous character, thus unhappily ſuſpended between two irreconcileable obligations; and ſummoned, as he thought, by a public duty to his country, to ſtrike a blow, againſt which a ſenſe of private gratitude as loudly exclaimed; is ſurely a worthy object both of our eſteem and compaſſion. How terrible muſt have been the ſtruggles of ſo noble and generous a mind, on the affectionate rebuke which fell from the faltering tongue of his expiring benefactor; and probably drew more blood from the heart of the involuntary murderer, than his own hand had drawn from the body of this illuſtrious victim!

From a miſtaken emulation of the glory of his famous anceſtor, he too eaſily forgot the diſtinction between Tarquin and Cæſar, between the deſtroyer and the father of Rome. With ideas well ſuited to the

[81] Καισσιος, ανηρ θυμοειδης, και μαλλον ιδιᾳ μισοκαισαρ η κοινῃ μισοτυραννος. Plut. in Brut. p. 223. Αλλ' Αἰλιωι γε και πολλοις ακουσαι λεγουσι, ὡς μονον εικοσι βριλον επιθεσθαι Καισαρι, προαχθειλα τη λαμπροτητι και τῳ φαινομενῳ καλῳ της πραξεως, τους δ' αλλους υπι τον ανδρα συγγναι μισους, ἰας και φθονους. Id. ib. p. 245.

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ſtate of a ſmall and infant republic, he little thought how impracticable it was for a boundleſs and potent empire to ſubmit to the plain and contracted principles of the antient conſtitution; and that, when the ſimplicity and moderation of the primitive manners were once loſt in the immenſity of dominion, concord and unanimity would no longer ſurvive. A mind ſo well diſciplined in philoſophy and policy, and matured by a due knowledge of mankind, ought to have known, that a multiplicity of rulers muſt neceſſarily be productive of diſtraction and anarchy; and that nothing could reſtore tranquillity and order, but the lenient hand of a mild and ſteady governor. For want of a due attention to theſe plain doctrines, which the very exigencies of the times might naturally have ſuggeſted, he deprived the ſtate of its beſt friend and patron, and accelerated thoſe evils which he pretended to redreſs. The ſtorm, which might have ſoon been diſperſed, once more collected with accumulated terrors; and burſting with all its fury upon the heads of this devoted people, involved every order, from the ſenator to the peaſant, in the ſame univerſal deſolation [22].

[22] Ει γαρ που και δημοκρατια τις ηθησεν, αλλ' εν βραχει χρονῳ ηκμασε, μιχρις ου μητε μεγεθος, μητε ισχυν ισχον, ὡτε η ὑβρις σφισιν εξ ευπραγιας, η φθονους εκ φιλοτιμιας εγγενεσθαι. πολιν τε αυτην τηλικαυτην ουσαν, και του τε καλλιστου του τε πλειστου της οικουμενης της εμφανους αρχουσαν, και πολλα μεν ανθρωπων ηθη και διαφορα κεκτημενην, πολλους δε και μεγαλους πλεθρα ισχυσαν, ταις τε πραξισι και ταις τυχαις ταυτοδαπαις και ιδια και δημοσια χρωμενην, αδυνατον μεν εν δημοκρατια σωφρονησαι, αδυνατωτερον δε μη σωφρονουσαν ὁμονοησαι. ὡστ' ουτε ταυτα ὁντως ὁ τε Βρυτος ὁ Μαρκος και ὁ Κασσιος ὁ Γαϊος εξελογισαντο, ουκ αν πολε του τε προσταττειν και του κηδεμονα αυτης αποκλειναι, ουδ' αν μυριων αιτιων κακων και ἑαυτοις και τοις αλλοις τοις τοτε ανθρωποις εγενοντο. Dio Caſſ. 44. 2.

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CHAP. III.

General obſervations upon the ſtate of the conſtitution at this period.—Second Triumvirate.——Progreſs of the Imperial power under Octavius.

CHAP. III. General Obſervations.

THOUGH Julius Cæſar has been uſually eſteemed the founder of the Imperial government, he can hardly be ſaid to have done more than humble the inſolence, and break the ſpirit of the ariſtocratic faction. Much leſs can the ruin of the public liberty be laid to *his* charge alone; that having been long ago effected by the combinations of the powerful nobility; who had erected a multitude of petty dynaſties in every quarter of the empire, the moſt repugnant, in their own nature, to the genius of the ancient commonwealth, and inimical to the rights of the inferior citizens.

That his deſign was to unite the numerous inhabitants of theſe vaſt territories under one ſupreme head, cannot be doubted. But when we conſider the general tenor of his political conduct; his well-known clemency and greatneſs of ſoul; the many beneficial regulations already carried into execution; and various others apparently in his contemplation; we muſt acknowledge, that the people at large had a fairer proſpect of enjoying the comforts of political order under his adminiſtration, than they had ever experienced in any part of the preceding century. The unfortunate cataſtrophe of his death hath, it is true, for ever concealed from us the more minute particulars of theſe projected improvements; but enough remains to juſtify us in affirming, that a monarchy, conſtructed upon ſuch principles as he was known to profeſs, would have been as far removed

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moved from the ſtern and ſevere ſpirit of unbridled deſpotiſm, as pure and ſober liberty is from republican anarchy.

It is natural to ſuppoſe that he would wiſh to perpetuate that power, which he had taken ſo much pains to raiſe. But having no iſſue of his own body, he adopted his great-nephew Octavius; enrolled him in the order of patricians; and by a careful and liberal education, and an early initiation into the nicer myſteries of civil policy, prepared him to fill his deſtined ſtation with prudence and dignity [1].

The alarming event, which called this young heir to the ſucceſſion ſo long before the expected time, probably effaced many of the beſt inſtructions of ſo judicious a maſter; gave different impreſſions to his tender mind; inſpired him with a deſire of revenge; and drove him to divers acts of cruelty and injuſtice, which muſt fill every human breaſt with horror and indignation; and which even his own heart could not fail to condemn. But his uncommonly good fortune, and length of days, gave him ample opportunities of atoning for his former miſconduct, and of creating a power of his own; by which he, in fact, diffuſed tranquillity and happineſs through the whole Roman world, though he both lived and died an abſolute monarch.

But after all, though the ancient free conſtitution was thus entirely deſtroyed, the forms of it were, as yet, ſuffered to ſurvive; perhaps to amuſe the imaginations, and aſſuage the fears of a de-

[1] Theſe anecdotes are collected from the Greek hiſtorian; who, ſpeaking of the origin of the young Octavius, adds, Ορφανος δε υπο του Ουλαυϊου του πατρος καταλειφθεις, στραφη μεν παρα τε τη μητρι και παρα τω αδελφω αυτης Λουκιω Φιλιππω. αυξηθεις δε, συνδιετριβε τω Καισαρι. απαις τε γαρ εκεινος ων, και μεγαλως επ' αυτω ελπιδας εχων, ηγαπα τε και φιλειτο αυτον, ως και του ομαιμου, και της ουσιας, της τε ΜΟΝΑΡΧΙΑΣ διαδοχον καταλειψων. Dio Caſſ. 45. 1. And ſoon after, Εξ ουν τουτων ὁ Καισαρ μεγαλα επ' αυτω ελπισας, ες τε τους συπατριδας αυτον εσηγαγε, και επι την αρχην ησκει, και παιδ' ὁσα προσηκε, τω μελλοντι καλως και κατ' αξιαν τηλικουτου κρατος διοικησειν, ὑπαρχειν, ακριβως εξεπαιδευσε. λογους τε γαρ ῥητορικους, ουχ' ὁτι τη των Λατινων, αλλα και τη της γλωττης ησκητο· και εν ταις τραπεζαις εξομιλων εξεπονειτο, τα τε πολιτικα και τα αρχαια ισχυρως εδιδασκετο. Id. 45. 2.

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luded people, with the charms of favorite, but empty titles. No effort, however, having been made to erect any new formal ſyſtem of government upon the ruins of the preceding, it ſubſided, in a courſe of years, into a deſpotiſm of fact, rather than of law; that was practiſed, more than avowed. When Octavius once found himſelf fixed in the Imperial throne, without danger of further oppoſition, his cool, cautious, and phlegmatic mind naturally induced him to accommodate the exerciſe of his power to the circumſtances of the times, and the temper of the people. By prudently avoiding the parade of authority, he more ſecurely enjoyed the reality; and by the uniform and perſevering moderation of his conduct, whether ſincere or affected is of little conſequence, made his ſubjects believe themſelves free, becauſe they felt themſelves happy.

In this ſtate was the conſtitution tranſmitted to his ſucceſſors, without any eſtabliſhed mode of conveyance, either hereditary, teſtamentary, or elective; and, in after-times, if not ſettled by the reigning Prince in his life, upon each demiſe, was moſt uſually ſeized by a rapacious and profligate ſoldiery; who diſpoſed of it, as beſt ſuited either their fancy or intereſt, to perſons of every country and ſtation; whether to a Roman or a barbarian, a general or a manipulary. Thus was it ever beginning a-new, without a chance of arriving at any ſtate of perfection; and though it ſometimes had the good fortune to be adminiſtered by very juſt, wiſe, and able governors, from whom it occaſionally received many ſubſtantial reparations, yet, from its radical defects, it fell into a gradual and incurable decay, till it finally vaniſhed from the face of the earth.

The progreſs of the Imperial power during the reign of Octavius deſerves the minuteſt attention; as it affords an inſtructive leſſon to the ſubjects of all free ſtates, to guard, with the moſt jealous circumſpection, that ineſtimable bleſſing of political liberty; and to prevent them from being too laviſh of their conceſſions,

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ceſſions, even to the moſt virtuous ſovereign; well knowing, that power long given up cannot eaſily be recalled; and that what paſſed only as a compliment to a good prince, will aſſuredly be converted into a precedent, to juſtify the demands of a bad one. It will ſupply us likewiſe with a rare inſtance of an uſurper ruling over a mighty people in tranquillity, whom he had ſubjugated by violence; and eſtabliſhing that throne by wiſdom and beneficence, which he had obtained by the moſt outrageous acts of cruelty and injuſtice.

The fervent prayer of the Syracuſan matron, for the health of a living tyrant, certainly did no ſmall credit to her diſcernment; and gave her a fair title to that immortality, which hiſtory has conferred upon her memory. Had the ſame prophetic devotion warmed the hearts of the conſpirators againſt Cæſar; had it animated them with but half the zeal in ſupporting his authority, and guarding his life, which they moſt impoliticly and cruelly exerted in deſtroying both; their names might have been recorded with honor; and their country would never have felt the heavy yoke of her new band of taſk-maſters, by infinite degrees more tyrannical than the former; and which made the monarchy of Cæſar an age of gold [2]. The perverſeneſs of falſe patriotiſm may indeed exalt theſe mock-deliverers into heroes and demi-gods; but ſober-minded moderation will conſider them only as infatuated aſſaſſins.

As the cry of liberty is always at hand, to gloſs over every arbitrary violation of the laws of nature and ſociety, it was immediately called in to the aid of the conſpirators; and the intimidated multitude was conſoled with a promiſed revival of the extinct conſtitution, to ſpring with redoubled vigor from the blood of the deceaſed tyrant [3]. But the people, either from being loſt to the feelings of their

[2] Ὥστε χρυσον την τυ Καισαρος μοναρχιαν φανηναι. Dio Caſſ. 47. 15.

[3] Συνελθοντων αυτων ες εκκλησιαν, πολλα μεν κακα του Καισαρος, πολλα δε και ὑπερ της δημοκρατιας

their antient free condition, or from a diffidence in the ſincerity of its pretended advocates, inſtead of exulting in the death of an oppreſſor, vented their grief in the bittereſt lamentations, as for the loſs of a parent. They celebrated his funeral obſequies with every mark of the ſincereſt concern; and, in the tumult of their affection, decreed divine honors to his memory [4].

Even the ſenators were far from being unanimous in their approbation of the murder; and, after warm debates, *Whether Cæſar ſhould be declared an uſurper, or a lawful magiſtrate?* ratified all his former acts, by a conſiderable majority of voices, without allowing the moſt minute alteration. At the perſuaſion of Cicero they likewiſe voted a general amneſty of paſt injuries; and beſtowed provinces upon the friends of Brutus and Caſſius. But no part of theſe conciliatory terms produced their intended effect [5]. Mutual animoſity had taken too deep root in the minds of the contending parties, to be appeaſed by a vote; each had recourſe to arms; and, after various acts of reciprocal violence, a new aſſociation was formed by the partizans of the Cæſarean cauſe; who ſeized the whole power into their own hands, and divided the Roman empire between themſelves, as if it had been a private patrimony [6].

ὶ σφαγις ειπὼν· θαρσὶν τε σφας, και μηδεν δεινον προσδεχισθαι εκελευον. ουδε γαρ επι δυναςειφ, ουδ' επ' αλλη τολεμειξιφ ουδεμιφ απειλοσηαι αυλον ὡφαται, αλλ' ὶκα εδεγθεροι τε και αυλονομοι οντες, ορθως τολιτευωνται. Dio Caſſ. 44. 21. See likewiſe the oration of Brutus to the people. App. de Bell. Civ. p. 514.

[4] Βωμον τινα ε τω της τορας χαριφ ιδρυσαμενος, —δυειν τι αυλφ, και καταρχισθαι τω Καισαρι, ὡς και θιφ, ιτειχειρουν. Dio Caſſ. 44. 51.

[5] Ἡ συγκλησις——των ὑτο Καισαρος γεγονοτων ε̃ψηφισαλο μηδεν αλλαξαι. Plut. in Ant. p. 78. And again, Ἡ συγκλησις αμνηςιας τινας και συμβασεις τρατευσα τασιν, Καισαρα μεν ὡς θεον τιμαν ε̃ψηφισαλο, και νομον μηδε το σμικροταλον ὡν εκεινος αρχων εβυλευσε· τοις τε περι Βρυτον επαρχιας τε διενειμαν, και τιμας απεδωκαν ωρεπουσας· ὡτε ωασιν ὶσασθαι τα τραγμαλα κατασασιν εχειν, και συγκρισιν απειληφεναι την ωριτην. Plut. in Cæſ. p. 171. And, more particularly, Κικερων ωολλα ωρος τον καιρον οικειως διελθων, επεισε την συγκλησον, Αθηναιους μιμησαμενην, αμνηςιαν των επι Καισαρι ψηφισασθαι, τιμας δε τοις ωερι Κασσιον και Βρυτον επαρχιας. ισχυε δε τελων τελος ουδεν. Plut. in Cic. p. 486. The ſpeech of this famous orator, though loſt in the original, is ſtill preſerved in the Greek language, in which his adherence to his favorite principle, "Tempori ſervien- "dum eſſe, Ep. Fam. 9. 7." is diſplayed in its full colors, Dio Caſſ. 44. 23—34.

[6] Διενειμαλο την συμπασαν αρχην, ὡσπερ ουσιαν ωαλρωαν ε̃ αλληλους. Plut. in Ant. p. 83.

BOOK III.

Second Triumvirate. A. U. C. 710.

Formidable as the firſt triumvirate might have been, to thoſe who entertained a due ſenſe of the bleſſings of liberty, it was yet a gay ſcene of tranquility and order, in compariſon of the ſecond; which would have reflected diſhonor upon the moſt blood-thirſty and unprincipled barbarians; and was a diſgrace to the records of a civilized country.

The ſeveral conſtituents of this famous triple-league, were all, like their predeceſſors, of very different characters; and ſeem to have engaged in it from entirely different motives.

Lepidus.

Lepidus was the wretched dupe of his own vanity[7]. Deſtitute of thoſe talents which are neceſſary to form an intelligent and active politician, he became a mere engine to promote the intrigues of his more ſubtle collegues; till, being of no further uſe to either, he was deprived of his dignity; and, too contemptible to be the object of fear or jealouſy, was ſuffered to end his days in baniſhment and obſcurity[8].

Antony.

Antony's views were to gratify his ambition, extravagance, and licentiouſneſs; and, after the triumviral union was diſſolved, he maintained the conteſt againſt his competitor with conſummate valour and perſeverance, till he ſacrificed his own glory, as well as the intereſt of a vaſt empire, to a vicious and ungovernable paſſion[9];

[7] "Hic vir omnium vaniſſimus, neque "ulla virtute tam longam fortunæ indul- "gentiam meritus." Vell. Pat. 2. 80.

[8] Ὁ μεν δη και αυτοκραΐωρ πολλακις, και των τριων ανδρων γενομενος, αρχυΐας τι αποφηνας, και προγραψας επι θανατῳ τοσουσδι ὁμοΐμους, ιδιωτευων, και ενιους των προγραφεντων αρχουσιν υστερον παρισταμενος, διεζωσε. App. de Bell. Civ. p. 743. Dio Caſſ. 54. 15. "Spoliata quam tueri "non poterat dignitas." Vell. Pat. 2. 80. "Supplicem conceſſa vita Circeios in per- "petuam relegavit (ſc. Auguſtus)." Suet. in Oct. 16.

[9] "Furor Antonii quatenus ambitu non "interiret, luxu et libidine extinctus eſt.— "Patriæ, nominis, togæ, faſcium oblitus, "totus in monſtrum illud ut mente, ita "animo quoque et cultu deſciverat." Flor. 4. 11. This paſſage refers to his quitting the Parthian expedition, for the ſake only of ſpending the winter with Cleopatra; and we find the ſame fact deſcribed in ſtill more animated language by the Greek hiſtorian: Τοσαυτην μεντοι παρασκευην και δυναμιν, ἡ και τους πιραν Βακτρων Ινδους ιφοβησι, και πασαν ηπαδαν τῳ Ασιαν, ανοπλον αυτῳ δια Κλεοπατραν γιγεσθαι λεγουσι. σπευδουσα γαρ ηδιον διαχειμασαι, τον πολεμον εξενηγκειν προ καιρου, και πασι χρησασθαι ηταρχγμενως· ουκ οντα των αυτῳ λογισμων, αλλ' ὑπο φαρμακων τινων ἡ γοητειας παπλαινοντα προς ηδονην αει, και προς τῳ ταχιον ηπανελθειν μαλλον, ἡ προς τῳ κρατησαι των πολεμιων γενομενον. App. de Bell. Parth. p. 158.

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and died an ignominious death in the arms of an abandoned proſtitute, who had deceived and betrayed him.

Octavius.

The peculiar and critical ſituation of Octavius, in ſome meaſure, leſſens the atrociouſneſs of *his* uſurpation, and gives it ſomething like the appearance of an act of neceſſity. The blood of his friend and benefactor cried aloud for vengeance; he was himſelf ſurrounded on all ſides with rivals and enemies; and the ſafety of his life, as well as of his inheritance, required the utmoſt exertions both of his courage and prudence. Thus, under pretence only of aſſerting his own perſonal and family rights, he gradually triumphed over every opponent; and, by gentle, but ſteady approaches, made his way to that ſovereign dominion, which was the principal object of his ambitious wiſhes [10].

Of ſuch perſons, and upon ſuch principles, was formed this ſecond triumvirate, deſervedly odious to the Roman people; though the moſt deteſtable of the whole was Antony [11]. Unlike as they were to each other in ſentiment and diſpoſition, power and revenge were, as uſual, their common objects, which they purſued without the leaſt reſtraint of remorſe or conſcience; threatening deſtruction not only to the murderers of Cæſar, but to all others whom they ſuſpected of the remoteſt diſaffection to their uſurped authority. The moſt illuſtrious and reſpectable characters fell the unpitied victims of this general proſcription, and Cicero among the reſt; in ſpite of the earneſt intreaties of Octavius, to whom he had paid a mean and ſervile court [12], to protect him from their fury.

[10] Ὄυτω μεν—Ὀκταουϊος—ἠψαῖο των πραγμαῖων· και αὐλα και καῖισαρξι και καῖισργασαῖο, παῖλος μεν ανδρος πανικωῖερον, παῖλος δε πρισβυτερυ φρονιμωτερον. πρωῖον μεν γαρ, ὡς και επι μονη τη του κληρου διαδοχη, και ιδιωῖικως και μετ' ολιγων, ανευ ογκου τινος, ις την πολιν ισηλθεν· επειτ' ουδ' ηπειλει ουδεν ωδε, ωστε επεδικυλο ὀτι αχθοιτο τε τοις γεγονοσι, και τιμωριαν αὐλων ποιησοῖο. Dio Caſſ. 45. 5.

[11] Ἡ δε και τα πολλα Ῥωμαιοις επαχθης ἡ των τριων αρχη· και το πλειςον ὁ Αὶλπιος της αιτιας ειχε. Plut. in Ant. p. 84.

[12] Εδοκει δε και αναδιξασθαι προθυμως την Καισαρος Φιλιαν. Plut. in Cic. p. 488. id. in Brut. p. 238.

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But, not to dwell too long upon theſe melancholy and diſguſting ſcenes, ſuffice it to obſerve, that in theſe deplorable times, the voice of juſtice was totally put to ſilence; the arbitrary will of the tyrants was the law of the day; and the whole empire was involved in all the horrors of civil diſſenſion [13].

Thus was the firſt entrance of Octavius upon the ſtage of public life attended with every inauſpicious omen, that could alarm the fears, and aggravate the calamities, of a diſtracted and divided people. His rank, fortune, and near relation to the late emperor, had made him the principal character in the ſecond triumvirate. Stimulated both by the impetuous paſſions of unbridled youth, and and the irreſiſtible importunities of his mercileſs collegues, he had too readily concurred in all thoſe inhuman maſſacres, which rendered the faireſt regions of the world a loathſome ſcene of blood and deſolation; and the moſt conſpicuous and unblemiſhed perſonages of the times, the wanton victims of ambition and revenge. Deeply practiced in the ways of murder, from henceforth what could be expected from him, but an unremitting courſe of the moſt ſtudied and refined tyranny?—But the tempeſt gathered, loured, and diſperſed.—Having, by a final triumph over his only ſurviving rival, acquired the full power of becoming a tyrant at pleaſure, the remainder of his life was an exemplary pattern of forbearance and mercy [14].

Being therefore, by his peculiar felicity, raiſed to a ſtate of ſuch tranſcendent power, where is the wonder that a ſuperſtitious age

[13] Such as we find them deſcribed in the pathetic ſtrains of the Mantuan muſe:

"Ubi fas verſum atque nefas, tot bella per
"orbem,
"Tam variæ ſcelerum facies."
Virg. Georg. 1. 505.

And more at large by Dio Caſſ. 47. 1—19.

[14] Ει τινες και των πρoτερων των εν τοις εμφυλιοις πολεμοις γενομενων, εμνημονευον, εκεινα μεν τη των πραγματων αναγκη απετιθεσαν· την δε δη γνωμην αυτου, εξ ου το κρατος αναμφιλογον ισχυε, εξεταζειν ηξιουν. πλειστον γαρ δη το διαφορον ως αληθως παρισχετο. και τουτο μεν καθ' εκαστον αν τις των πραχθεντων επιξιων ακριβως ευρησει. Dio Caſſ. 56. 44.

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ſhould place its hopes in him, as a being of a ſuperior order; as a tutelar deity, that was to reſtore peace to a diſquieted world?"[15]— A very pardonable ſtrain of poetical flattery, at ſuch a criſis!—A young conqueror thus appearing in all the luſtre of victory, and, even by the confeſſion of his enemies, adorned with many valuable accompliſhments, could not fail to ſtrike the imagination, and excite the applauſe of a diſorderly people, torn in pieces by faction, and diſpirited by oppreſſion; and to incline them to make an eaſy ſacrifice of thoſe liberties, which they had themſelves ſo groſsly abuſed, and were now no longer capable of enjoying[16].

The enormous bulk of the Roman empire itſelf was, likewiſe, another ſtrong leading cauſe to this univerſal and implicit ſubmiſſion. Being then extended over almoſt every region of the known world, it was grown much too unwieldy to be governed by a riotous and capricious populace; and therefore naturally took refuge in the arms of a victorious hero[17], who, by his ſole authority, was the beſt enabled

[15] Thus Virgil ſupplicates the gods, whom he ſuppoſes the more immediate protectors of the Roman ſtate:

"Hunc ſaltem everſo juvenem ſuccurrere
"ſeclo
"Ne prohibete." Georg. 1. 500.

And again,

"Hic vir, hic eſt, tibi quem promitti ſæ-
"pius audis,
"Auguſtus Cæſar, divi genus; aurea condet
"Sæcula qui rurſus Latio, regnata per arva
"Saturno quondam." Æn. 6. 791.

[16] In the funeral oration pronounced over Auguſtus by his ſucceſſor Tiberius, the hiſtorian puts the following words into the mouth of the orator; Ὀθνειοις και ὑμεις, καλως πιστευοντες και ορθως φρονουντες, ουκ ηισχυνθη, ουτε επιτριψατε αυτῳ ιδιωτευσαι, αλλ' ὰτε ευ ειδοτες, ὲτι δημοκρατια μεν ουποτ' αν τηλικουτοις πραγμασιν ἁρμοσειε, πρωτασια δε ἑνος ανδρος μαλις' αν αυτα σωσειε, λεγῳ μεν ουτε επαινθειν εις την αυτονομιαν, ἐργῳ δε εις τους τασιασμους, ηθελησατε· και εκεινον μεν, ου αυτοις τοις ἐργοις ἀποδεικνυντες, προκρινοντες, ηναγκασατε χρονον γε τινα ὑμων προστηναι. Dio Caſſ. 56. 39.

To the ſame effect, it was ſaid in excuſe for him, "Non aliud diſcordantis patriæ remedium fuiſſe, quam ut ab uno regeretur." Tac. Ann. 1. 9.

[17] Thus ſays the ſame candid and judicious writer of the commencement of the reign of Octavius; "Poſito *triumviri* nomine, conſulem ſe ferens, et ad tuendam plebem tribunitio jure contentum; ubi militem donis, populum annona, cunctos dulcedine otii pellexit; inſurgere paulatim, munia ſenatus, magiſtratuum, legum in ſe trahere, nullo adverſante; cum ferociſſimi per acies, aut proſcriptione cecidiſſent: cæteri nobilium, quanto quis ſervitio promptior, opibus et honoribus extollerentur: ac novis ex rebus aucti, tuta et præſentia, quam vetera

BOOK III. A. U. C. 725.

enabled to modify, and reduce to order, the confuſed elements of an ill-conſtructed republic.

The actual commencement of the Roman monarchy is fixed, by the moſt intelligent writers, to the time when Octavius returned in triumph to Rome, after having ſettled the affairs of the Eaſt, in which the party of Antony had hitherto prevailed. By ſuch events being at once exalted above all other princes of the earth, this favorite ſon of fortune began, himſelf, to look down from his tremendous eminence with giddineſs and horror. The reſentment of a magnanimous people, deprived of their liberty; the Ides of March; the juſt and tragical end of the generality of uſurpers, haunted his imagination; admoniſhed him to renounce his authority; and, by a policy, the direct reverſe of his illuſtrious predeceſſors, to ſeek for ſhelter from the ſtorm in privacy and retirement [18].

But before he came to a final reſolution, upon a point of equal importance both to his own perſonal ſafety, and the future welfare of the Roman empire, he communicated his doubts and apprehenſions to Agrippa and Mæcenas, upon whoſe integrity, wiſdom, and friendſhip, he had the firmeſt reliance; though they happened to differ totally in their opinions upon the expediency of the meaſure.

The firſt applauded the propoſal as highly juſt and popular, earneſtly preſſing him to an immediate reſignation; while the other repreſented it as impolitic and fatal; and with equal warmth diſſuaded him from it [19]. The reſult of this conſultation was, that he

" vetera et periculoſa mallent. Neque pro-
" vinciæ illum rerum ſtatum abnuebant,
" ſuſpecto ſenatus populique imperio ob cer-
" tamina potentium, et avaritiam magiſtra-
" tuum: invalido legum auxilio, quæ vi,
" ambitu, poſtremo pecunia turbabantur."
Tac. Ann. 1. 2.

[18] Ταυτα μεν ουν τε τη βασιλειᾳ, και ουν τη δημοκρατιᾳ, ταις τε δυναστειαις, πιστε τε και εικοσι και επτακοσιοις ετεσι, και επραξαν οι Ρωμαιοι και επαθον. εκ δε τουτου μοναρχεισθαι αυθις ακριβως ηξαιλο· καιτοι του Καισαρος βουλευσαμενου τα τε οπλα καθεσθαι, και τα πραγματα τη τε γερουσιᾳ και τω δημω επιτρεψαι. Dio Caſſ. 52. 1.

[19] The ſubſtance of the arguments uſed on both ſides is ſtill preſerved in the form of ſpeeches or addreſſes, and are curious remains of antiquity, as they contain every reaſon

he more prudently adhered to the latter advice; partly, from a juſt dread of the danger of reducing himſelf to a private ſtation; and partly, from the uncertainty of doing any real ſervice to the public, by truſting the reins of government to the hands of a turbulent and factious multitude [20].

As Mecænas is, in ſome degree, accountable for the conſequences of this determination, it ought to be remembered to his honor, that he exhorted him, at the ſame time, to avoid all invidious affectation of abſolute power, and to have recourſe to the aid of a ſelect council, to be choſen out of the beſt men of the nation; not by lot, or in compliment to their own perſonal ſolicitation, but merely in conſideration of their ſuperior characters and abilities. "Thus," ſays he, "would good men receive the rewards due to their real merit "without envy; and bad ones be puniſhed without exciting ſedi-"tion: affairs of ſtate would be duly adminiſtered, without the "neceſſity of referring them on all occaſions to the judgment of "the multitude; or of expoſing them to the hazard of being diſ-"turbed by the ſeditious declamations of popular orators [21]."

Moderate as this advice was in its tendency, Octavius did not chuſe to adopt it in its utmoſt latitude; but advanced by ſlow and cautious gradations, ſo as to avoid every occaſion of inflaming the ſuſpicions of the people; leaving the remainder of the plan to be com-

reaſon that can well be urged upon each ſide of ſo material a queſtion: for theſe, therefore, the reader is referred to Dio Caſſ. 52. 1—40.

[20] "De reddendâ republicâ bis cogitavit: "——Sed reputans, et ſe privatum non ſine "periculo fore, et illam plurium arbitrio "temere committi, in retinendâ perſevera-"vit." Suet. in Oct. 28.

[21] Μη γαρ τοι οιηθης, ὁτι τυραννησαι σοι, τον τε δημον και την βουλην διελωσαμην, παραινω. τουτο μεν γαρ ουτ' αν εγω ποτε εινειν, ουτ' αν συ πραξαι τολμησειας. εκεινα δε δη και καλα και χρησιμα και σοι και τη πολει γενοιτο αν, το, τι παντα τα προσηκοντα αυτον σε μιᾳ αριστων ανδρων νομοθετειν, μηδενος των πολλων μητ' αντιλεγοντος αυτοις, μηδε εναντιουμενου. ——ὁι τι εγχειριζομενοι, απ' αρετης, αλλα μη κληρῳ και σπουδαρχια, αποδεικνυνται· και ὁι μεν αγαθοι ανευ φθονου τιμωνται, ὁι δε κακοι ανευ συγκρισεως κολαζονται. ὁυτω γαρ αν μαλιστα τα τε πρακτεα ορθως διοικηθειη, μητε ες το κοινον αναφερομενα μητε εν τῳ φανερῳ βουλευομενα, μητε εν τοις παρακελευστοις επιτερπομενα, μητε εκ φιλοτιμιας κινδυνευομενα. Dio Caſſ. 52. 15.

BOOK III.

pleted by his ſucceſſors, as the circumſtances of future times might admit[22].

Soon afterwards he obtained the title of "Imperator;" a complimentary term of reſpect, with which the ſoldiers were wont to ſalute their general in the field of battle, after any ſignal victory, atchieved by his conduct and bravery. As ſuch, it was repeated, as often as the reſpective events required; and was enjoyed by many illuſtrious warriors at once, without the leaſt diſparagement of their rank or quality[23]. It had even been aſſumed by Octavius himſelf on twenty-one different occaſions[24]; but was now uſed in a more excluſive ſenſe, as a permanent attribute of ſovereignty, guarded with a variety of important prerogatives, as when conferred for the ſame purpoſe upon Julius Cæſar[25]. In this manner it was made

[22] Ὁ δὲ δὴ Καισαρ αμφοῖν μὲν σφας και ἐπι τῃ πολιτειᾳ και ἐπι τῃ πολυλογιᾳ, τῃ τε παῤῥησιᾳ, ἰσχυρως ἐπῃνεσε· τα δὲ δὴ του Μαικηνου μαλλον ἐλελυσο. οὐ μεντοι και παυλα ἐνθυς ὡσπερ ὑπελυθησαν ἐπραξε· φοβηθεις μὴ και σφαλῃ τι, ἀθρους μεταῤῥυθμισαι τους ἀνθρωπους ἐθελησας· αλλα τα μὲν παραχρημα μετεκοσμησε, τα δ' ὑστερον. και τινα και τοις μετα ταυτα ἀρξουσι ποιησαι καταλιπεν, ὡς και καλα καιρον μαλλον ἐν τῳ χρονῳ γενησομενα. Dio Caſſ. 52. 41.

[23] "Tiberius—Blæſo tribuit, ut Imperator a legionibus ſalutaretur: priſco erga "duces honore, qui bene geſta republica, "gaudio et impetu victoris exercitus con"clamabantur. Erantque plures ſimul im"peratores, nec ſuper cæterorum æqualita"tem. Conceſſit quibuſdam et Auguſtus "id vocabulum, ac tunc Tiberius Blæſo." Tac. Ann. 3. 74. Grav. de Imp. Rom. 5.

[24] "Nomen Imperatoris ſemel atque vi"cies partum." Tac. Ann. 1. 9. Ἐκεινην πολλακις μεν και πρόλεγον, πολλακις δὲ και ὑστερον ἀπ' αὐτων των ἐργων ἐλαβεν, ὡστε και ἐν εικοσιν ονομα αὐτοκραλορος σχειν. Dio Caſſ. 52. 41.

[25] This was likewiſe in conſequence of the advice of Mecænas: Ει γε το μὲν πραγμα το της μοναρχιας ἀρχη, το δ' ονομα της βασιλειας ὡς και ἐπαράλον φοβηθης, τουτο μὲν μη προσλαβῃς, τῃ δὲ δὴ του Καισαρος προσηγοριᾳ χρωμενος, αὐταρχει. ει δ' ουν και αλλων τινων κλησεων προσδεῃ, δωσουσι μὲν σοι την του αὐτοκραλορος, ὡσπερ και τῳ πατρι σου ἐδωκαν· σεβιουσι δὲ σε και ἑτερᾳ τινι προσρησει, ὡς σε παν το της βασιλειας ἐργον, ανευ του της ἐπωνυμιας αὐτης ἐπιφθονου, καρπουσθαι. Dio Caſſ. 52. 40. He accordingly Την τε αὐτοκραλορος ἐπικλησιν ἐπεθετο. λεγω δὲ ου την ἐπι ταις νικαις καλα το αρχαιον διδομενην τισιν,—αλλα την ἑτεραν την το κραλος διασημαινουσαν, ὡσπερ τῳ παῖδι αὐτου τῳ Καισαρι και τοις παισι και τοις ἐκγονοις ἐλαβετο. Id. 52. 41. As this learned hiſtorian has taken a great deal of pains to point out the different ſenſes in which the title of *Imperator* was applied to the Cæſars, it may not be improper to lay before the reader ſome other paſſages, in which the ſame diſtinction is very particularly explained. Thus, ſpeaking of the honors conferred by the ſenate on Julius Cæſar, he adds, Το, τε του αὐτοκραλορος ονομα, ου καλα το αρχαιον ἐτι μονον, ὡσπερ αλλοι τε και ἐκεινος ὡς πολλακις ἐκ των πολεμων ἐπεκληθησαν, ουδ' ὡς οἱ τινα αὐτοτελη ἡγεμονιαν η και αλλην τινα ἐξουσιαν λαβοντες, νομαζοντο, αλλα καθαπαξ τουτο δη, το και νυν τοις το κραλος ἐχουσι διδομενον, ἐκεινῳ τοτε

made hereditary in all future princes; was adopted by Charlemagne, who called himſelf the ſucceſſor of the Roman Cæſars; and has ever ſince been eſteemed the higheſt mark of diſtinction among the modern potentates of Europe.

One of the firſt acts of Octavius, when firmly ſeated in the Imperial throne, was to reform the ſenate; which, during the confuſion of the late civil wars, had been ſhamefully debaſed by the intruſion of an heterogeneous band of foreigners, ſoldiers, and even ſlaves; ſo as to be wholly declined from its primitive luſtre, as well as multiplied to more than a thouſand. As this ſcrutiny had uſually been made by the cenſors, he took upon himſelf that office, in conjunction with Agrippa; and having convinced many of their own unworthineſs, by a fair appeal to their conſciences, he perſuaded them to abdicate their ſeats, which he ſupplied with others of more unblemiſhed reputations, limiting their number, for the time to come, to ſix hundred [27].

He

τοτι πρωΐῃ τε και πρωτον, ὡσπερ τι κυριον, προσεθισαν. και τοσαυτη γε ὑπερβολη κολακειας εχρησαντο, ὡστι και τους παιδας τους τε εγγονους αυλον ὀυλω καλεισθαι ψηφισασθαι, μηδε τεκνον τι αυλου εχοθος, και γεροντος ηδη οθος. ὀθεν τις και επι παιδας τους μιλα ταυλα αυλοκραλορας τη επικλησει αυλη, ὡσπερ τις ιδια της αρχης αυλων ουσα, καθαπερ και ἡ του Καισαρος, αφικεῖο. ου μειοι και το αρχαιον εκ τουτου κατειληφη, αλλ' εστιν ικαλιρον· και δια τουτο και δευτερον επ' αυλων επαγεῖαι, ὁταν νικην τινα τοιαυτην απενεγκωσι. Οι μεν γαρ αυλο τουλο αυλοκραλορες, ἁπαξ τη προσηγορια ταυτη, ὡσπερ εν ταις αλλαις, και πρωτη γε χρωνται· ὁις δ' αν και δια πολεμων αξιον τι αυλης καλορθωθη, ὀυλοι δη και εκεινην την απο του αρχαιου προσλαμβανουσιο. κἀκ τουτου και διυλερον τις και τριτον, πλεοναχις τε, ὁσακις αν παρασχη ὁι, αυλοκραλως επονομαζεῖαι. Dio Caſſ. 43. 44. And in a ſubſequent paſſage applied to Auguſtus, Την του αυλοκραλορος προσρησιν διαπαντος ου μονον ὁι νικησαντες τινας, αλλα και ὁι αλλοι παντες, προς δηλωσιν της αυλοτελους σφων εξουσιας, ανθ' της του βασιλεως του τε διαδεξαμενου επικλησεως, εχουσιν. Id. 53. 17.

[26] "Senatorum affluentem numerum de-
"formi et incondita turba, erant enim ſu-
"pra mille, et quidam indigniſſimi, et poſt
"necem Cæſaris per gratiam et præmium
"adlecti, quos Orcinos vulgus vocabat, ad
"modum priſtinum et ſplendorem rede-
"git." Suet. in Oct. 35. Μετα ταυτα τιμητευσας συν τῳ Αγριππᾳ, αλλα τε τινα διωρθωσι, και την βουλην εξητασι. πολλοι μεν γαρ ἡσαν, πολλοι δε και πλειοι παρα την αξιαν, εκ των εμφυλιων πολεμων εβουλευον, ὡστε και ες χιλιους το πληρωμα της γερουσιας αυξηθηναι. τουτους ουν εκκριναι βουληθεις, αυτος μεν ουδενα αυτων απηλειψε, προτερηψημενος δε σφας εκ του συνειδοτος του τε γενους και του βιου δικαιας ἑαυτοις γενεσθαι, το μεν πρωτον πεπηκοτας που επεισε θελοντας εκστηναι του συνεδριου, επειτα δε και αλλους ικανον και τεσσαρακοντα μιμησασθαι σφας ηναγκασε. και αυτων ητιμωσε μεν ουδενα, τα δ' ονοματα των διυλερων εξεθηκε. τοις γαρ πρωτεροις, ὁτι μη εχρησαν, αλλ' ευθυς επιθαρχησαν ὁι, αφηκε το ονειδισμα, ὡς' αυτους μη εκθημοσιευθηναι. ὁυτοι μεν ουν εκουσιοι δηθεν ιδιωτευσαν. Dio Caſſ. 52. 42.

[27] Εβουλευσαντο μεν τριακοσιους αυλους καλα το αρχαιον ποιησαι, και παυ αγαπητον νομιζων ειναι, τοσουτους αξιους του συνεδριου, σφων ευριθηναι· δυσχεραναντων δε παντων ὁμοιως, (τῳ γαρ πολυ πλειους των εμμενοντων

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He likewiſe extended the value of their qualifications; and when he found any who were deſerving of a place among them, but without a fortune adequate to the rank, made up their deficiencies out of his own privy purſe[28]. He then laid down certain rules for the time and mode of their aſſembling; and aſked their advice on every occaſion of conſequence; encouraging a general freedom of debate, and an unreſtrained communication of ſentiment, in all matters that were propoſed to them for their deliberation[29]. With all this, himſelf appeared under no other character, than that of *Prince of the Senate*[30];" a title, indeed, of diſtinguiſhed eminence, much reverenced in the old republic, and which always carried with it a conſiderable weight and influence; but, as it conveyed no greater legal privileges, than that of being the *Firſt among Equals*, gave no umbrage by its novelty.

In the midſt of theſe endeavours to augment the ſplendor of this auguſt body at home, he was equally careful to prevent the members of it from forming parties, and creating ſeditions in the more diſtant provinces. With this view, he prohibited them from leaving Italy without his expreſs conſent, except only to viſit their eſtates in Sicily, or in the ſouthern provinces of Gaul[31]; which law continued in full force through ſeveral ſucceeding centuries[32].

Being

εμμενοθων εν αυλῳ τους διαγραφησομενος εσεσθαι, φοβεισθαι μαλλον αυτους μη ιδιωτευσωσιν, η προσδοκᾳν ὁτι και βουλευσουσι, συνεξαιν) τους εξακοσιους καθιελεξαλο. Dio Caſſ. 54. 14.

[28] "Senatorum cenſum ampliavit: ac pro "octingentorum millium ſumma duodecies "HS. taxavit, ſupplevitque non habenti-"bus." Suet. in Oct. 41. Τις μεν γαρ ουκ αν των βελευτων αυτα μνημονευσειεν; ων το φαυλον το εκ των γαδειων επιπολασαν αλυπως αφειλεν, το λοιπον αυτῳ τε τουτῳ εσημηνε, και τῃ αυξησει τῃ τιμηματος εμεγαλυνε, τῃ τε δοσει των χρηματων επλουτισεν. Dio Caſſ. 56. 41.

[29] Οις εξ ισου και αυτος την γνωμην εδιδου, και μεθ' ων συμβιδιζατο· ὡν παντα τα μεγιζα και αναγκαιοτατα αει ποτε η εις τῳ συνεδριῳ, η και οικοι, δια τε την ηλικιαν και δια την ασθενειαν τ̃ σωματος, παραλαμβανον αλλοτε αλλους, επεκοινου. Dio Caſſ. 56. 41.

[30] Προκρίτος της γερουσιας επεκληθη, ὡσπερ εν τῃ ακριβει δημοκρατιᾳ ενομιζο. Dio Caſſ. 53. 1. "Auguſtus, cuncta diſcordiis civilibus feſſa, "nomine *Principis* ſub imperium accepit," And again, "Non regno, neque dictatura, "ſed *Principis* nomine conſtitutam rempub-"licam." Tac. Ann. 1. 1 & 9.

[31] *Gallia Narbonenſis*, which correſponds with the modern provinces of *Languedoc*, *Provence*, and *Dauphiny*.

[32] Προσαπειπε πασι τοις βουλευουσι μη εκδημειν εξω της Ιταλιας, αν μη αυτος τινι επιτρεψῃ· και τουτο και δευρο αει φυλασσεται. πλην γαρ

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A. U. C. 726.

Being now entered upon his ſixth conſulſhip, and determined to regulate his conduct by the eſtabliſhed rules of the antient conſtitution, he divided the "Faſces" equally with his collegue, Agrippa; and at the expiration of his magiſtracy, took the cuſtomary oath, that he had not wilfully tranſgreſſed the laws, or done injury to any man[13].

With a ſtrict attention to the ſame temperate and wholeſome policy, he made it his buſineſs to preſerve all the external forms of the old commonwealth, and the rights of the reſpective magiſtrates, in their original channels. But to reconcile the exerciſe of them with his own ſovereign power, he aſſumed every one of the higher offices in their turn (the dictatorſhip alone excepted[14]); and, in conjunction with his partners, diſcharged all the duties reſpectively belonging to each.

Whether he ever actually took upon himſelf the title of cenſor, has been much doubted; though he certainly revived[15], and occaſionally executed, ſeveral of the moſt important functions of that venerable office; particularly that already mentioned of reforming the ſenate, together with the general ſuperintendence of the manners of the people[16].

By

γαρ ὁτι ες τε την Σικελιαν και ες την Γαλατιαν τὴν πρὶν Ναρβωνα, ουδαμοσε αλλοσε βουλευὴν ἀποδημησαι ἐξεστιν· ἐκεισε γαρ διὰ τε το συνεγγυς, και διὰ το ασφαλὲς τοῦ τε ἐρημαιου τῶν ἀνθρωπων, δεδοται τοις γε τι κεκλημενοις αὐτοθι, και απὸ στρατηγιας, ὁσακις αν ἐθελησωσιν, ἀπιεναι. Dio Caſſ. 52. 42. In alluſion to the ſame law Tacitus obſerves, "Galliæ Narbonenſi ob egregiam in Patres "reverentiam datum, *ut ſenatoribus ejus provinciæ, non conſiſta principis ſententia, jure quo Sicilia haberetur, res ſuas inviſere licerent.*" Tac. Ann. 12. 23.

[13] Τῳ δὲ ἐξης ἐτει ὁ Καισαρ ἠρξε και τα τε ἀλλα καλα το νομιζομενον ἀπο του παυ ἀρχαιου ἐποιησε, και τους φακελους των ἐδαφων τῳ Αγριππᾳ συναρχοντι ὁι καλα το ἐπιβαλλον παρεδωκεν, αὐτος τε ταις ἰτηραις ἐχρησατο· και διαξας τον ὁρκον καλα τα πατρια ἐπηγαγε. Dio Caſſ. 53. 1.

[14] Ἱνα γε μη ἐκ δυναστειας, ἀλλ' ἐκ των νομων τουτ' ἐχειν δοκωσι, παντ' ὁσα ἐν τῃ δημοκρατιᾳ μεγα παρ' ἐκεινοις σφισιν ἰσχυσεν, αὐτοις τοις ὀνομασι, χωρις τῆς δικτατωριας, προσεποιησαντο. Dio Caſſ. 53. 17.

[15] "Cenſores creari deſitos longo interuallo creavit." Suet. ib. 37.

Ουτε γαρ την ἀρχην ὑπεστη, ἐνθυς ἐτερους τιμησας —ἀπεδειξεν—και τοτε δη ὁ Αυγουστος, καιπερ ἐκεινων ἀειδιντων, πολλα των ες αὐτους ἀνηκοντων ἐπραξε. Dio Caſſ. 54. 2.

[16] "Recepit et morum legumque regimen "æque perpetuum: quo jure, *quanquam ſine "cenſuræ honore*, cenſum tamen populi ter "egit: primum ac tertium cum collega, "medium

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By the advice of Mæcenas, he likewiſe augmented the number both of the miniſterial and judicial officers, whereby he was ſupplied with a conſtant ſucceſſion of experienced counſellors; and whenever he was choſen conſul, always required that two others ſhould be joined with him; thinking it no diminution of his own dignity, not to enjoy that honor alone[37].

The tribunate, an office of the firſt conſequence, and liable to no control even in the ages of the moſt perfect liberty, was conferred upon him for life by a decree of the ſenate[38]. To this he always paid a very cloſe attention; and though ſeveral objects of its power were loſt, together with the republic, yet he frequently convoked the people by their tribes; reſtored the antient rights of the "Comitia[39];" ſupplicated in them for magiſtracies in the uſual

"medium ſolus." Suet. in Oct. 27. To which it is not improbable that Horace alludes in the following compliment,

"Cum tot ſuſtineas et tanta negotia ſolus,
"Res Italas armis tuteris, *moribus* ornes,
"*Legibus* emendes." Ep. 2. 1. 1.

Επιμελητης τε των τροπων εσ πεντε παρακληθεις διεχειροτονηθη, και την εξουσιαν την μεν των τιμητων εις τον αυτον χρονον. Dio Caſſ. 54. 10.

The ſame author, in a preceding paſſage, is ſtill more particular, where, ſpeaking of the power exerciſed by the emperors in general, he obſerves; Εκ δε δη του τιμηλευειν, τους τε βιους και τους τροπους ημων εξιταζουσι, και απογραφας ποιουνται· και τους μεν καθαλεγουσι, και εις την ἱππαδα, και εις το βελευτικον, τους δε και απαλειφουσιν, ὁπως αν αυτοις δοξη. Id. 53. 17.

37 Quoque plures partem adminiſtrandæ Reip. caperent, nova officia excogitavit:—numerum prætorum auxit; exegit etiam, ut quoties conſulatus ſibi daretur, binos pro ſingulis collegas haberet: nec obtinuit, reclamantibus cunctis, ſatis majeſtatem ejus imminui, quod honorem eum non ſolus, ſed cum altero gereret. Suet. ib. 37.

Περος δ' ετι και καλως ειχει, δια πλειονων παντα τα τη αρχη προσηκοντα διαγισθαι, ὁπως και αφιλωνται αἱμα συχνοι, και εμπειροι των πραγματων γιγνωται. ουτω γαρ οἱ τε αρχομενοι μαλλον ευνοησουσι σοι, πολυνιδη απολαυσιν των κοινων αγαθων καρπουμενοι, και συ αφθονωταῖα τοις αει ἀριστοις προς παντα τα αναγκαια χρηση. Dio Caſſ. 52. 25.

38 "Tribunitiam poteſtatem perpetuam "recepit: in qua ſemel atque iterum per "ſingula luſtra collegam ſibi cooptavit." Suet. in Oct. 27. "Continuata per ſeptem "et triginta annos tribunitia poteſtas." Tac. Ann. 1. 9.

39 "Comitiorum priſtinum jus reduxit." Suet. in Oct. 40. Thus Tiberius to the ſame effect; Ουτε εν ταις διαγνωμαις την εξουσιαν της διαψηφισεως κατελυσεν, αλλα και την ασφαλειαν της παῤῥησιας προστιθεικεν. εκ τε του δημου το δυσκριτον εν ταις διαγνωσεσιν εις την των δικαστηριων ακριβειαν μεταγησας, το, τε αξιωμα των αρχαιρεσιων αυτω ετηρησε, και ταυταις το φιλοτιμον αντι του φιλοπολου σφας εξεπαιδευσε. και των σπουδαρχιων αυτων το πλουσιακον εκκοψας, το ενδοξον αυτοις απεδωκε. Dio Caſſ. 56. 40.

form;

form [40]; made many excellent regulations, and paſſed many liberal and ſalutary laws, which are ſtill extant [41]; himſelf giving his vote, as one of the people [42].

It is true, that this indiſcriminate accumulation of honors upon a ſingle perſon was of a very impolitic and dangerous nature; and was, in fact, proſtituted to many arbitrary and tyrannical uſes by the ſucceeding emperors [43]. But the ſteady and gentle hand of Octavius for a while averted theſe malignant effects. By being endued with a more direct aſcendency over his aſſociates in office, he protected the people againſt the oppreſſions of the great and opulent, to which, for ſome preceding ages, they had been ſo fatally expoſed.

Though in full poſſeſſion of every degree of authority, to which his moſt ardent ambition could poſſibly aſpire, he well knew that the pageantry of power was often more alarming than the exerciſe of it. He was, therefore, extremely delicate and modeſt in the uſe of titles, and could never be perſuaded to aſſume any but ſuch as were of a private and perſonal import; ſtrenuouſly diſclaiming all thoſe that conveyed the leaſt ideas of abſolute ſovereignty.

[40] "Quoties magiſtratuum comitiis in-"tereſſet, tribus cum candidatis ſuis cir-"cumibat, ſupplicabatque more ſolenni." Suet. in Oct. 56.

[41] "Leges retractavit, et quaſdam ex integro ſanxit. Suet. in Oct. 34. Πως (δ' αν τις επιλαθοιτο) τω τε πληθους και της ακριβειας αμα των νομων, των τοις, μεν αδικουμενοις αυταρκες παραμυθιον, τοις δ' αδικουσιν ουκ απαιδρωτον τιμωριαν εχοντων. Dio Caſſ. 56. 41.

[42] "Ferebatque et ipſe ſuffragium in tribu-"bus, ut unus e populo." Suet. in Oct. 56.

[43] Thus the Greek hiſtorian, after an enumeration of many other abuſes of the Imperial power, cloſes the whole with that of the tribuneſhip in particular; Η τε εξουσια η δημαρχικη καλουμενη, ην οι παν ποτε ανθησαιλις ισχυ, διδωσι σφισι τα τε επιγιγνομενα υφ' ετερου τινος, αν μη συνεπαινωσι, παυειν, και μη καθυποβριζισθαι· και αρα τι και το βραχυταλον μη ετι εργω αλλα και λογω αδικεισθαι δοξωσι, και ακριλον τον ποιησωλα αυλο ως και ενεγκη απολλυναι. δημαρχειν μεν γαρ, ατε και ες τους ευπατριδας παλαι τελουλες, ουκ οσιον νομιζουσιν ειναι· την δε δη δυναμιν της των δημαρχων πασαν, ισχυ περ τα μαλιστα εγκειλο, προστιθεναι, και δι' αυλης και η εξαριθμησις των ετων της αρχης αυλων, ως και κατ' ετος αυλην μιλα των απο δημαρχουλων λαμβανοιλων, προβαινει. ταυτα μεν εκ της δημοκρατιας, ως που και εκαστα νομισθη, ουλω τι και δια τουλων των ονομαλων ειληφασιν, οπως μηδεν ανευ δοξης τινος εχειν δοκωσιν. Dio Caſſ. 53. 17.

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The office of Perpetual Dictator had been aboliſhed by a conſular edict, immediately upon the murder of Julius Cæſar; and the moſt dreadful penalties and execrations were fulminated againſt that perſon who ſhould ever uſurp, or even propoſe the future revival of it [44]. This law, however, with all its ſeverity, could not deter the ſycophants of the times from preſſing it with much earneſtneſs upon Octavius; who, with equal wiſdom and reſolution, rejected this inſidious compliment [45]. When ſaluted likewiſe in the theatres, by the general acclamations of the people, with the name of *Lord*, he expreſſed every poſſible ſymptom of diſguſt at ſuch indecent adulation; and, by a public edict, forbad the future application of that title to himſelf, even from his own family [46].

The chief object of his wiſhes, in the line of titulary honors, was to obtain the appellation of *Romulus*, as the ſecond founder of the empire. But that being too cloſely connected with *King*, a word ſtill more terrible to the ears of the Romans, than the actual power was to their feelings [47], he prudently deſiſted from that pretenſion; contenting himſelf with the ſurname of *Auguſtus*, an epithet, which diffuſed a kind of myſterious ſanctity over his perſon and character, without diſturbing their minds with any formidable ideas of regal ſuperiority [48]. To this he added that of *Cæſar*, purſuant to the

[44] Νομον επιθηκαν (ſc. Conſules) μηδενα αυθις δικταϊωρα γενεσθαι· αρας τε ποιησαμενοι, και θανατον προειπονλες, αν τις εισηγησηται τουτο, αν δ' υποση, και προσετι και χρηματα αυτοις αντικρυς επικηρυξανλες. Dio Caſſ. 44. 51.

[45] "Dictaturam magna vi offerente populo, genu nixus, dejecta ab humeris toga, nudo pectore, deprecatus eſt." Suet. in Oct. 52.

[46] Domini appellationem, ut maledictum, ſemper exhorruit; *dominumque* ſe poſthac appellari ne a liberis quidem aut nepotibus ſuis, vel ſerio vel joco paſſus eſt: atque hujuſmodi blanditias etiam inter ipſos prohibuit. Suet. in Oct. 53. Δισποτης τε τοτε ὁ Αυγουστος υπο τε δημε ονομασθεις, ουχ ὁπως απειπε μηδενα τουτῳ προς ἑαυτον τῳ προσρηματι χρησασθαι, αλλα και παυ δια φυλακης αυτο εποιησατο. 55. 12.

[47] Ὁ και θαυμαστον ην, ὁτι τοις εργοις τα των βασιλευοντων ὑπομενοντες, τὸνομα του βασιλεως, ὡς καταλυσιν της ελευθεριας, εφευγον. Plut. in Ant. p. 77.

[48] "Auguſti cognomen aſſumpſit,—Munatii Planci ſententia: cum quibuſdam cenſentibus, Romulum appellari oportere, quaſi et ipſum conditorem urbis, prævaluiſſet ut Auguſtus potius vocaretur, non tantum novo, ſed etiam ampliore cognomine:

the will of his predeceſſor, to point out the family into which he had been adopted[49]. The whole was crowned with the moſt endearing title of *Pater Patriæ*; not with any deſign of arming him with that ſtern and abſolute power, which the rigor of the Roman law allowed in the ſyſtem of domeſtic government; but as an admonition to him to treat his ſubjects as his children; and to his ſubjects, to reſpect and love him as their common parent[50]: and this honorable mark of diſtinction he is ſaid to have accepted with tears of joy[51].

From the ſame cautious motives, which had uniformly actuated his whole conduct, he ſtudiouſly avoided the idle clamors of popular applauſe; and not to lay too great a tax upon the affectionate

" nomine: quod loca quoque religioſa et " in quibus augurato quid conſecratur, au- " guſta dicantur." Suet. in Oct. 7. " Tractatum etiam in ſenatu, an quia condi- " diſſet imperium, Romulus vocaretur; ſed " ſanctius et reverentius viſum eſt nomen " Auguſti; ut ſcilicet jam tum, dum colit " terras, ipſo nomine et titulo conſecrare- " tur." Flor. 4. 12. Ο Καισαρ επιθυμει μεν ισχυρως Ρωμυλος ονομασθηναι· αισθομενος δε ὁτι ὑποπτευεται εκ τουδου της βασιλειας επιθυμειν, ουκετ' αυτω αντεποιησαλο, αλλα Αυγουστος, ὡς και πλειον τι η κατ' ανθρωπους ων, επεκληθη. παλαι γαρ τα ιλιμναλα και τα ἱερωταλα, αυγουστα προσαγορευλαι, ἐξ ὁυπερ και σεβαστον αὐλον και ἑλληνιζοντες πως, ὡσπερ τινα σεπλον, απο του σεβαζεσθαι, προσειπον. Dio Caſſ. 53. 16.

[49] " C. Cæſaris—cognomen—aſſumpſit— " teſtamento majoris avunculi." Suet. in Oct. 7. Η γαρ δη του Καισαρος η τε του Αυγουστου προσρησις δυναμιν μεν ὑδεμιαν αυτοις οικειαν προστιθησι, δηλοῖ δ' αλλως το μεν, την του γενους σφων διαδοχην, το δε, την του αξιωματος λαμπροτητα. Dio Caſſ. 53. 18.

[50] Και η γε του πατρος επωνυμια ταχα μεν και ἐξουσιαν τινα αυτοις, ἡν ποτε οι πατερες επι τους παιδας ἰσχον, κατα παντων ἡμων δἑδωσιν· ου μεντοι και επι τουτο αρχην εγενετο, αλλ' ες τε τιμην τε και ες παραινεσιν, ἱνα αυτοι τε τους αρχομενους, ὡς και παιδας αγαπωσιν, και ἑκεινοι σφας, ὡς και πατερας αἰδωνται. Dio Caſſ. 53. 18.

[51] As this event redounds greatly to his honor, and is fully expreſſive of the ſenſe entertained by the public of his true character, it deſerves to be related, as it ſtands at length in the words of his biographer.—" Patris Patriæ cognomen univerſi repentino " maximoque conſenſu detulerunt ei. Pri- " ma plebs, legatione Antium miſſa: dein " quia non recipiebat, ineunti Romæ ſpec- " tacula frequens et laureata: mox in curia " ſenatus: neque decreto, neque acclama- " tione, ſed per Valerium Meſſalam id man- " dantibus cunctis: *Quod bonum*, inquit, *fauſ- " tumque ſit tibi, domuique tuæ, Cæſar Auguſte; " (ſic enim nos perpetuam felicitatem reipublicæ " et lætæ huic precari exiſtimamus) ſenatus te " conſentiens cum populo Romano conſalutat* " PATRIÆ PATREM. Cui lacrymans " reſpondit Auguſtus, his verbis (ipſa enim, " ſicut Meſſalæ, poſui), *Compos factus voto- " torum meorum, Patres conſcripti, quid habeo " aliud Deos immortales precari, quam ut " hunc conſenſum veſtrum ad ultimum vitæ " finem mihi perferre liceat.*" Suet. in Oct. 58.

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civility of the gazing multitude, his uſual practice was, both to leave, and enter, the city by night[52]. During his reſidence there, he adopted the ſtyle of life and manners of an ordinary citizen, without departing from the dignity of the prince. Utterly averſe from the ſevere and unſocial pride of Aſiatic deſpotiſm, he received and returned the ſalutations of the loweſt plebeians[53]; ſuch as were in diſtreſs he aſſiſted with his private fortune; all legacies left to him by thoſe who had children he generouſly reſtored to the family[54]; and ſo warm an attachment did he ſhew to the intereſts of his particular friends, that he was at all times ready to aid them with advice, and would ſometimes condeſcend to plead their cauſes in perſon[55]. Thus did he eaſily ſecure the love and eſteem of the people, by the irreſiſtible attraction of politeneſs, affability, and benevolence[56].

But while he was thus rich to the world, he was poor to himſelf; and in the midſt of an age, infamous for every extreme of luxury and effeminacy, ſtood forth a bright example of frugality and temperance[57]. From a laudable zeal to ſuppreſs the prevailing

[52] "Non temere urbe oppidove ullo egreſſus, aut quoquam ingreſſus eſt, niſi veſpere aut noctu; ne quem officii cauſâ inquietaret." Suet. in Oct. 53. Νυκτος εις την πολιν εσεκομισθη· ὁπερ που και αει ειτε εις τα προαστεια, ειτε και αλλοσε που εκδημοιη, και αφορμωμενος και επανιων, ὁμοιως εποιει, ἱνα μηδεν αυτων οχληρος ειη. Dio Caſſ. 54. 25.—And again—ὑμας δε δη μηδ' ὁσον προπεμψαι που αυλον απιοντα, η και απαντησαι οι επανιοντι ταλαιπωρησαντος. Id. 56. 41.

[53] "Promiſcuis ſalutationibus admittebat "et plebem" Suet. in Oct. 53.

[54] Πολλα μεν και εκ των οικειων πολλοις χαρισασθαι, παυλα δε τα καταλειφθεντα αυτῳ ὑπο τινων παιδας εχοντων, αυτοις εκεινοις αποδουναι. Dio Caſſ. 56. 41.

[55] Of this the hiſtorian has left us the following very remarkable inſtance; Ουτω γαρ που δημοκρατικος ηξιει ειναι, ὡστε τινος των συγκαλεσαμενων πολιν αυλῳ συνηγορημαλος παρ' αυλου δεηθεὶος, το μεν πρωτον των φιλων τινα, ὡς και εν ασχολιᾳ ων, συνειπειν αυλῳ κελευσαι, επειτ' επειδη εκεινος οργισθεις εφη, "εγω μεντοι ὁσακις επικουριας χρειαν ισχεις, "ουκ αλλον τινα αντ' εμαυτου σοι επεμψα, αλλ' "αυτος παραλαχου προεικινδυνευσα σοι," ες τε το δικαστηριον εσελθειν, και συνηγορησαι οι. Dio Caſſ. 55. 4.

[56] Ευπροσοδος τε γαρ πασιν ομοιως ην, και ες χρηματα πολλοις επηρκει· τους τε φιλους ισχυρως ετιμα, και ταις παῤῥησιαις αυτων ὑπεριχαιρε. Dio Caſſ. 56. 43.

[57] Πως δ' αν τις επιλαθοιτο ανδρος ιδια μεν πενητος, δημοσια δε πλουσιου, και προς ἑαυτου μεν οικονομικου, προς δε τους αλλους αναλωτικου γενομενου. Dio Caſſ. 56. 41. Of this likewiſe various other inſtances are recorded by Suet. in Oct. 73—78.

vanity

vanity and extravagance, he ſet reaſonable limits to the enormous expences of family entertainments[58], which, for a few days of ſuperſtitious feſtivity, involved many honeſt and induſtrious citizens in years of poverty; and had almoſt extinguiſhed that national temperance, hardineſs, and ſimplicity, which were the true baſis of the grandeur and good fortune of antient Rome. The ſhews exhibited by the principal magiſtrates on their inauguration, were become a ſtill more crying evil; having introduced a falſe ſpirit of emulation, not only deſtructive of all domeſtic œconomy, but encouraging a general diſſipation and corruption of manners, from the higheſt orders to the loweſt. Auguſtus, therefore, forbad them any longer to vie with each other in ſuch ruinous and impolitic profuſion. He preſcribed the number of gladiators for each exhibition, which they were not allowed to exceed; and to relieve the prætors from part of theſe burdens, without entirely depriving the people of their favorite ſpectacles, he made an allowance towards them from the public treaſury[59].

The malevolent tongue of detraction may repreſent theſe, and many other excellent regulations, as nothing more than a cheap ſacrifice of vanity to prudence; or as an affected contempt of that pomp and ſplendor, which much oftener excite envy than inſure power. But when the effects are good, candor forbids us to ſay that the motives were evil; eſpecially as his whole conduct admits the preſumption, that the arbitrary ſpirit of his policy was kept in due ſubjection by the moderation of his temper[60]. Fond as he might be

[58] Called by the antients, "Cœnæ adjiciales." Plin. Nat. Hiſt. 10. 23.

[59] Των συσσιτιων τα μεν παντελως καθηλωσε, τα δε προς το σωφρονεστερον συνεστειλε· και τοις μεν γραπτους τας πανηγυρεις πασας προσεταξεν, εκ τε του δημοσιου διδοσθαι τι αυθις κελευσας· και προσαπτειν μεν τι εκεινας οικοθεν, τινα πλειον του ετους αναλισκειν μηθ' οπλομαχιαν, μητ' αλλως ει μη ἡ βουλη ψηφισαιτο, μητ' αυ πλειοναις ἡ δις εν ἑκαστῳ ετει, μητε πλειονων εικοσι και ἑκατον ανδρων, ποιειν. Dio Caſſ. 54. 2. In this age the pontifical ſuppers were become proverbial: hence the expreſſion of Horace;

"Mero—
"Pontificum potiore cœnis." Od. 2. 14.

[60] Thus ſays Tiberius of him, ὡσπερ τις αγαθος ιατρος, σωμα νεοσηκες παραλαβων και εξιασαμενος, απειδωκει παλιν υμιν υγια ποιησας.—And a little further—που δη δυναιτ' αν τις της Αυγουστου μεγαλοφροσυνης αφικεσθαι, ὁστις πασας μεν τας δυναμεις

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be of abſolute monarchy, he well knew that a brave military people were not to be reduced to a ſtate of ſervile obedience, by the mere dint of ſuperior force. To reconcile them to his government, it was neceſſary to humour their paſſions; to ſtudy their intereſt; to preſerve the ſpecious appearance of the antient commonwealth; and to amuſe them with a notion of their own free agency, while they were really acting under his permiſſion or connivance.

The ardor of republican independence had, indeed, been long upon the decline. The lower and weaker claſſes, ſeverely haraſſed by a variety of petty ariſtocratical tyrants, were much more deſirous of being revenged of their oppreſſors, than of being free themſelves; of ſetting up ſome abſolute potentate, who ſhould have power to annihilate all the reſt, than of a reſtoration of the popular government, which, in the preſent ſtate of public affairs, was of too delicate and precarious a nature, to promiſe any durable enjoyment [61]. On theſe conſiderations, they were more eager to compliment Octavius with a total reſignation of their liberties, than he was to accept of it.

But to ſhew himſelf deſerving of this popular confidence, to ſoften the tremendous aſpect of Imperial power, and to make all poſſible atonement for his former cruelties and oppreſſions, he aboliſhed, by a public edict, all the acts of his own deteſtable triumvirate; and enacted many new laws, to preſerve to his ſubjects the peaceable enjoyment of their private rights, under his own princely protection [62].

δυναμεις ὑμων τηλικαυτας ὑσας ἐχων, παντων δι των χρηματων πλειονων ὀντων κρατων, και μητε φοβουμενος τινα, μηθ' ὑποπτευων, αλλ' ἐξον αὐτῳ παντων συνεπαιουντων μονῳ ἀρχειν· ουκ ηξιωσεν, αλλα και τα ὁπλα και τα ἐθνη και τα χρηματα ες το μεσον ὑμιν κατιθηκεν. Dio Caſſ. 56. 39.

[61] Ἡ μεν ουν πολιτεια ὁυτω τοτε πως τι το βελτιον και προς το σωτηριωδεστερον μετεκοσμηθη. και γαρ που και παντα πασιν ἀδυνατον ην, δημοκρατουμενους αὐτους σωθηναι. Dio Caſſ. 53. 19.

[62] Επειδη πολλα παυ καλα τε τας γνωσεις, κἀν τοις πολεμοις, ἀλλως τε και ἐν τῃ του Ἀβγουστου τυχῃ Λεπιδῳ συναρχια, και ἀνομως και ἀδικως ἐτἰλαχω, παυλα αὐλα δ' ἐνος προγραμματος κατελυσεν, ὁρον τῃ ἐκἐινου ὑπαλληλιαν προσθεις. Dio Caſſ. 53. 2.

"Sexto conſulatu Cæſar Auguſtus, potentiæ "ſecurus, quæ triumviratu juſſerat abolevit: "deditque jura, queis pace et principe ute-"remur." Tac. Ann. 3. 28.

Having,

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Having, by ſuch acts of lenity and generoſity, gained a firm ſeat in the hearts of the people, and inſured the affections of the ſenate, he laid hold of this favorable opportunity to obtain a confirmation of the ſovereignty by their univerſal conſent[63]. To this purpoſe he made a long and ſtudied harangue[64], wherein he apprized them of the "great force then in his hands, which would enable him "to retain it even againſt their conſent[65]; but not to keep them in "ſuſpence, he determined to reſtore all to them again, and re-"eſtabliſh the commonwealth; in hopes of convincing them, that "he was never actuated by the love of power, but only by a ſenſe of "duty to the memory of his deceaſed parent, whoſe murder he "was bound to revenge; by an earneſt deſire of appeaſing thoſe "commotions wherewith the city had been ſo long diſturbed[66], "and of reſtoring the national tranquillity; a conſummation which "he had moſt ardently endeavoured to effect, from his earlieſt "appearance in public life[67].

"Though he had accepted many extraordinary honors and "privileges from their hands, yet he never aſpired to any indul-"gences above others[68]; he thought it but an act of juſtice to "leave them to the adminiſtration of their own affairs; it was

[63] Ευδοκιμων τε ουν επι τουτοις και επαιτουμενος, επιθυμησι και ετιρας τινα μεγαλοψυχιας διαδιξασθαι, οπως και εκ του τοιουτου μαλλον τιμηθειη, και παρ' εκοντων δη των ανθρωπων την μοναρχιαν βεβαιωσασθαι, τον μη δοκειν ακοντας αυτους βιεσασθαι. και εκ τουτου τους μαλιστα επιηδειους ες των βουλευτων παρασκευασας, ες τε την γερουσιαν εσηλθεν, εβδομον υπαλινων, και ασηγω, &c. Dio Caſſ. 53. 2.

[64] This ſpeech, or the ſubſtance of it, is preſerved in Dio Caſſ. 53. 3—10.

[65] Οτι μεν παρεστι μοι διαπαλος αρχειν υμων, και αυλοι ωραλι—τα τε τρατιωτικα εκμαξοι μοι, και ευνοια και ρωμη και χρηματα εστι, και συμμαχοι. Id. ib. 4.

[66] Ου μενοι και επι πλειον υμας εξηγησομαι,—αλλα αφιημι την αρχην απασαν, και αποδιδωμι υμιν παλια απλως—ινα και εξ αυτων των εργων καταμαθητε τουθ', οτι ουθ' απ' αρχης δυναστειας τινος επεθυμησα, αλλ' οιως τω τε πατρι δικως σφαγειη τιμωρησαι, και την πολιν εκ μεγαλων και επαλληλων κακων εξελεσθαι ηθελησα. Id. ib.

[67] Επει δε διαρμοση τις, ως εοικεν, ες τουτο προηγαγεν ημας, ουτι και εμου, καιπερ νεου ετι τοτε οντος, και χρειαν σχειν, και πειραν λαβειν, μεχρι μεν του τα πραγματα της παρ' εμου επικουριας εχρηζε, παλα τε προθυμως και υπερ την ηλικιαν εποιησα, και παλα ευτυχως και υπερ την δυναμιν κατωρθωκα. Id. ib. 5.

[68] Ουδεν ανωτερω ουθ' υπερογκον, ουθ' υπερ τους πολλους, καιπερ πολλα πολλακις ψηφισαμενων υμων, εδεξαμην. Dio Caſſ. 53. 6.

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" for his own intereſt to be releaſed from the fatigues of public " buſineſs, and placed beyond the reach of envy and treachery; " and much more for his glory, to renounce the pomp of Ma- " jeſty, and deſcend, of his own accord, from ſo conſpicuous an " eminence to a private and domeſtic ſtation [69].

" He had not dwelt upon his own merits and ſervices to the " public, from any principle of vanity or oſtentation; but only to " aſſure them, that he eſteemed it his greateſt glory to make a vo- " luntary reſignation of that power, which all others take the pains " to acquire by force of arms [70].

" The antient Roman ſpirit was not expired with the Ho- " ratii, and other heroes of antiquity: neither was he ſo indif- " ferent to the public welfare, or ſo reſolved at all events to ſhake " off the load, as to reſign it into the hands of unfit and unworthy " men; much leſs to the populace at large (from whom not only no " good, but the moſt pernicious miſchiefs had always proceeded); " but he ſhould intruſt it to their care alone, who were ſo eminently " diſtinguiſhed for their wiſdom and virtue [71]. With regard to " himſelf, he was worn out with toil and afflictions; and it " was better for him to live privately with honor, than to rule " the empire in the midſt of danger; and it would be more bene- " ficial to have the government adminiſtered by their common con-

[69] Εγω γαρ, αν τι το δικαιον τις εξεταζη, δικαιοτατον ειναι νομιζω, το τα ὑμετερα ὑμας διεπειν· αν τε και το συμφερον, συμφερωτατον ἡγουμαι και εμοι, το μητε πραγματα εχειν, μητε φθονεισθαι, μητε επιβουλευεσθαι· και ὑμιν, το μετ' ελευθεριας και σωφρονως και φιλικως πολιτευεσθαι· αν τε και το ευκλεες.—πως μεν ουκ ενδοξοτατον μοι εσται, τηλικαυτης αρχης αφεσθαι; πως δ' ουκ ευκλεεστατον, εκ τοσουτου ἡγεμονειας ογκου, ἰδιωτῃ ἰδιωτευσαι; Id. ib.

[70] Λεγω δε ταυτα ουκ αλλως επικομπων,—αλλ' ἱνα ειδῃς, ὁτι πολλων και μεγαλων ες τε το κοινον ευεργετηματων, και ες τα οικεια σεμνολογηματων ὑμιν ὀντων, μητε τουτῳ μαλιστα αγαλλομεθα, ὁτι ὡν ἑτεροι και βιαζομενοι τινας επιθυμουσι, ταυθ' ἡμεις ουθ' ασαγκαζομενοι προϊεμεθα. Id. ib. 7.

[71] Μη γαρ τοι νομισῃ τις ὑμων, τους μεν παλαι Ῥωμαιους και αρῃης και ευδοξιας εφεισθαι, νυν τε εξιτηλον εν τῃ πολει παν το ανδρωδες γεγονεναι. μη μεντοι μηδ' ὑποπτευσῃ, ὁτι φροντιζειν τι ὑμας, και πονηρους τισιν ανδρασιν επιτρεψαι, η και οχλοκρατιαν τιν (εξ ἡς ου μονον ουδεν χρηστον, αλλα και παντα τα δεινοτατα αει τοσιν ανθρωποις γεγονεναι) εκδουναι βουλομαι. ὑμιν γαρ, ὑμιν τοις αριστοις και φρονιμωτατοις, παντα τα κοινα ανατιθημι. Id. ib. 8.

" ſent,

" ſent, than to have it depend upon the arbitrary direction of any " ſingle perſon[72]."

He then earneſtly intreated them " to aſſent to his propoſal, as he " was determined, not only not to exerciſe any ſovereign authority " himſelf, but readily to obey the lawful commands of others[73]: wiſh- " ing rather to end his days in a peaceful retirement before his deſtined " time, than to reign even in a ſtate of immortality[74]. He there- " fore reſtored to them their arms, provinces, revenues, and laws; " only with this advice, neither to deſpair of being able to diſcharge " the duties of government, from a fear of their difficulties; nor to " hold them in contempt, from an idea of their being too eaſy[75]."

He concluded with exhorting them " to adhere to the eſta- " bliſhed laws, and not wantonly to admit of innovations[76]: " to intruſt the government of the provinces, whether in peace " or war, to the moſt virtuous and prudent; not contending who " ſhould derive the greateſt benefit from their appointments; but " how the tranquillity and felicity of the ſtate ſhould be beſt pro- " moted[77]. Neither to inſult nor plunder their allies and ſubjects;

[72] Αυτος τε γαρ και σιπονημαι και πεπαλαικωρη- μαι, και ουκετ' ουδι τη ψυχη ουδι τω σωματι αντε- χειν δυναμαι. και προσιτι και τον φθονον και το μισος, α και προς του; αριστους ανδρας εγγιγνεται τισι, τας τε εξ αυδων επιβουλας, προορωμαι· και δια ταυτα και ιδιωτευσαι μαλλον ευκλεως, η μοναρχησαι επι- κινδυνως, αιρουμαι· και τα κοινα κοινως αν πολυ βελτιονα τε και υπο πολλων αμα διαγομενα, και μη ις ινα τινα αναβηματα, δοικοιτο. Id. ib.

[73] Δι' ουν ταυτα και ικεδευω και δεομαι παδων υμων, ομοιως και συνεπαινεσαι και συμπροθυμηθηναι μοι, λογισαμενος παρ' οσα και πεπολεμηκα υπερ υμων, και πεπολιτευμαι· κα' τουτω πασαν μοι την υπερ αυδων χαριν αποδοδαι, εν τω συγχωρησαι μοι εν ησυχια ηδη ποδ καλαβιωναι· ινα και εκεινο ειδητε, ότι ου μονον αρχειν, αλλα και αρχεσθαι επισαμαι, και παρ' οσα αλλοις επεταξα, και αυδος ανεπιταχθηναι δυνα- μαι. Id. ib. 9.

[74] Και παυ ετοιμως και προ του ειμαρμενου μοι χρονου τελευδησαι μαλλον, ιδιωτευσας, η και αθανατος μοναρχησας γενεσθαι, αιρουμαι. Id. ib.

[75] Αποδιδωμι υμιν και τα οπλα και τα εδνη, τας τε προσοδους και τους νομους· τοσουτον μονον υπειπων, ινα μητε το μεγεδος η και το δυσμεταχειριστον των προαγμαδων φοβηδητε, αδυμησητε, μηδ' αυ καδαφρο- νησαδις αυδων, ως και ραδιως διοικεισδαι δυναμενων, αμελησητε. Id. ib.

[76] Προδον μεν τους κειμενους νομους ισχυρως φυ- λαττεδε, και μηδενα αυδων μεδαβαλητε. τα γαρ εν ταυδη μενοντα, κα' χειρω η συμφορωτερα των αει καινουμενων, κα' βελτιω ειναι δοκη, εστι. Id. ib. 10.

[77] Τας τε αρχας και τας στρατιας και τας πο- λεμικας τοις αει αριστοις τε και εμφρονεστατοις επιτρε- πετε, μητε φθονουντες τισι, μηδ' υπερ του τον δεινα η τον δεινα πλεονεκτησαι τι, αλλ' υπερ του την πολιν και σωζεσθαι και ευπραγειν φιλουμενους. Id. ib.

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" nor to injure or fear their enemies; to have their arms al-
" ways in their hands, but not to uſe them either againſt each
" other, or thoſe in peace with them[78]. By a ſtrict adherence to ſuch
" rules, they would be both happy themſelves, and ſhew their grati-
" tude to him, who had raiſed them from a ſtate of ſedition and
" anarchy, to their preſent proſperity. But if they neglected this
" advice, they would cauſe him to repent of his condeſcenſion, and
" once more involve their country in war and perils[79]."

Had this exhortation been as much diſtinguiſhed by ſincerity, as good ſenſe, it might have paſſed for one of the nobleſt leſſons of morality and policy, that the moſt pure and virtuous patriot could have given to his free and happy ſubjects; but, on the contrary, it was a much better proof of the ſolidity of his underſtanding, than of the integrity of his heart: and the whole has generally been repreſented as a ſubtle artifice; merely to feel the pulſe of the ſenators, and to try their attachment to his perſon and government.

This ſingular oration produced a great diverſity of effects upon the minds of the audience. The few that were in the ſecret, warmly ſeconded his motion; ſome ſuſpected his deſign; others believed him in earneſt; the whole aſſembly was aſtoniſhed, ſome admiring his addreſs, ſome his propoſitions; while others expreſſed their diſſatisfaction at this change of his ſentiments: there being ſtill many who deteſted a popular government, and were perfectly contented under that of Cæſar[80]. The reſult of the whole was, that, being

[78] Τους μεν συμμαχους και τοις ὑπηκοους μητε ὑβριζειν, μηδε ἐκχρηματιζεσθαι, τους δε πολεμιους μητ' ἀδικειν, μητε φοβεισθαι. τα μεν ὁπλα ἐν ταις χερσιν εμμενειν ἐχειν· μη μεντοι μηδε καθ' ἀλληλων, μηδε καθα των ἐν ειρηνουσιν αὐτοις χρησθαι. Id. ib.

[79] Ἐν ουν ετι τουτο ειπων, παυσομαι· ὁτι αν μεν ὁυτω πολιτευησθε, αὐτοι τε ευδαιμονησειτε, και εμοι χαριεισθε, ὁστις ὑμας τοσαυτας κακως-λαβων, τοιουτους απεδειξα· αν δ' αδυνατησητε και ὁτιουν πραξαι αὐτων, εμε μεν μεταυνησαι ποιησετε, την δε δη πολιν ες τε πολεμους πολλους και ες κινδυνους μεγαλους αυθις εμβαλειτε. Id. ib.

[80] Τοιαυτα του Καισαρος ακαλεγοντος, ποικιλον τι παθος τους βουλευτας παρελαμβανεν. ολιγοι μεν γαρ την διανοιαν αὐτου ἠδεσαν, καὶ τουτου και συνεπεπυθανοντο αὐτῳ· των δ' αλλων ὁι μεν ὑπωπτευον τα λεγομενα,

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being all unwilling, from various motives, to ſpeak the real ſentiments of their hearts they joined in one unanimous ſupplication, that he would reſume the government; to which he yielded with much ſeeming reluctance, and by this ſubtle artifice ſecured himſelf in the throne for the remainder of his life [81].

Though Auguſtus (as he ſhould now be called) had been thus confirmed in the monarchy by a too mean and unbecoming diſſimulation, yet, in juſtice be it acknowledged, he neglected no means of preſerving his popularity, and of meriting the favors ſo laviſhly conferred upon him. In the public buſineſs of his miniſtry he was attentive and indefatigable; ſparing in the exerciſe of ſovereign power; committing the care of the richeſt and moſt peaceable provinces to the ſenate; and taking to his own department thoſe only that were the moſt warlike and turbulent. This likewiſe anſwered a double purpoſe. By leaving the ſenators in free poſſeſſion of their luxurious and peaceable governments, he gradually enervated their minds, and deſtroyed their appetite for war and enterpriſe; while he was himſelf conſtantly provided with a brave and numerous army, daily inured to fatigue, and practiſed in every kind of military operations [82].

μετα δι δε επιτευον σφισι, και δια ταυτα και εθαυμαζον ομοιως αμφοτεροι, οι μεν την ευτιτιχνησιν αυτου, οι δε την γνωμην· και ηχθοντο οι μεν τη πραγματια αυτου, οι δε τη μετανοια. το, τε γαρ δημοκρατικον ηδη τινες, ως και τασιωδες, εμισουν, και τη μεταστασει της πολιτειας ηρισκοντο, τω τε Καισαρι εχαιρον. Id. ib. 11.

[81] Πολλα μεν και μεταξυ αναγινωσκοντος αυτου διεσωσαν, πολλα δε και μετα τουτο, μοναρχισθαι τε δοκουντι, και παντα τα ες τουτο φερονια επιλεγοντες· μεχρι ου κατηναγκασαν αυτον αυταρχησαι. Id. ib.

[82] Την μεν ουν ηγεμονιαν τουτω τω τροπω και παρα της γερουσιας του τε δημου εβεβαιωσατο. βουληθεις δε δη και ως δημοτικος τις ειναι δοξαι, την μεν φροντιδα της τε προστασιας των κοινων πασαν, ως και επιμελειας τινος δεομενην, υπεδεξατο· ουτε δε πολιν αυτος των εθνων αρχειν, ουθ' οσων αν αρξη, διαπαυτος τουτο ποιησειν εφη· αλλα τα μεν ασθενεστερα, ως και ειρηναια και απολεμα, απεδωκε τη βουλη· τα δ' ισχυροτερα, ως και σφαλερα και επικινδυνα, και ητοι πολεμους τινας προσοικους εχοντα, η και αυτα καθ' εαυτα μεγα τι κωλυσαι δυναμενα, καθισχυ· λεγω μεν, οπως η μεν γερουσια αδεως τα καλλιστα της αρχης καρπωτο, αυτος δε τους τε πονους και τους κινδυνους εχοι· εργω δε, ινα επι τη προφασει ταυτη εκεινοι μεν και αοπλοι και αμαχοι ωσιν, αυτος δε δη μονος και οπλα εχη, και στρατιωτας τρεφη. Id. ib. 12.

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To repel the envy that would naturally ariſe from the idea of a perpetuity of power, and, at the ſame time, to expreſs his dependence upon the good-will of the public, from whom he profeſſed to hold it, he limited the duration to ten years; making it a conſtant practice to abdicate his command at the end of every ſucceeding decennial term, and to reſume it, with the like affected unwillingneſs [83]. A ſimilar ceremony was likewiſe obſerved by all his ſucceſſors for ſeveral ages; who, though they conſidered themſelves as ſovereigns for life, always celebrated every tenth year with feaſting and other ſolemnities, in token of a renovation of their power [84].

Thus was the Roman conſtitution become an entire monarchy, though others were occaſionally joined with the emperor in the adminiſtration [85]; and in this ſtate it continued, till it expired, many centuries afterwards, by its own weakneſs and imperfections. Whether Auguſtus ever had it in view to make any alterations in the political ſyſtem, or to eſtabliſh any future courſe of ſucceſſion, is quite uncertain: though one inſtance, not many years after, ſeemed to favor the ſuppoſition, that he really intended to reſtore the people to their liberty.

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On his entrance upon his eleventh conſulſhip he was attacked by a ſevere, and, as at firſt apprehended, an irrecoverable, illneſs. The ſenators and magiſtrates being, on that occaſion, aſſembled round

[83] Της γουν δεκαετιας εξελθουσης, αλλα ετη πεντε, ειτα πεντε, και μετα τουτο δεκα, και ἑτερα αυθις δεκα, πεμπλακις αυτῳ ἐψηφισθη· ὡστε τῃ των δεκετηρίδων διαδοχῃ δια βιου αυτον μοναρχησαι. Dio Caſſ. 53. 16.

Πληρωθισης δε οι και της τριτης δεκαετιας, την ἡγεμονιαν και το τεταρτον, εκβιασθεις δηθεν, ὑπεδέξατο. Id. 55. 12.

Thus Tiberius; ἐξ ου δη πολυ μαλλον αυτου πειραθεντες, και δευτερον αυθις και τριτον, τεταρτον τε και πεμπτον, ἐξεβιασασθε αυτον εν τῃ των κοινων διαχειρισει εμμεινai. Id. 56. 39.

[84] Και δια τουτο και οἱ μετα ταυτα αυτοκρατορες, καιτοι μηκετ' ες τακτον χρονον, αλλ' ες παντα καθαπαξ τον βιον αποδεικνυμενοι, ὁμως δια των δεκαετηρίδων ἑωρτασαν, ὡς και την ἡγεμονιαν αυθις τοτε ανανεωμενοι· και τουτο και νυν γινεται. Id. 53. 16. *i. e.* to the reign of Alexander Severus.

[85] Ὁυ̃λω μεν δη το, τε του δημου και το της γερουσιας κρα̃τος παν ες τον Αυγουστον μετεστη, και απ' αυ̃του και ακριβης μοναρχια κατεστη. μοναρχια γαρ, ει και τα μαλιστα και δυο και τρεις ἁμα το κυρος ποτε ισχον, αληθεστατα αν νομιζοιτο. Id. 53. 17.

his bed, expecting him to declare Marcellus his ſucceſſor, he appointed no one; but only delivered his book, wherein was preſerved an account of the army and revenue, to his collegue Piſo; and gave his ring to Agrippa[86]. But being afterwards reſtored to health, he deſired leave, on his firſt appearance in the ſenate, to lay his will before them, to ſhew that he had declined nominating any one to ſucceed him in the empire. They gave him credit, however, upon his own word[87]; and being ſatisfied with his declarations, made at a time when he could have had no intereſt in deceiving them, expreſſed their joy at his recovery by every poſſible token of affection and attachment; voted him new honors; and much enlarged the bounds of his Imperial prerogatives[88].

Being now at the ſummit of his ambition, and in the vigor of his life, he made the glory of the empire his own[89]. Not that he conceived it to conſiſt ſo much in the multitude of cities gained, and kingdoms ſubdued, by a violation of all duties both moral and religious; as in moderating that ſpirit of enterprize and falſe heroiſm, which, for ſo many preceding ages, had kept the whole world in a perpetual ferment. He wiſhed rather to ſecure what they had already gotten, than to acquire more: to teach them, that a well-compacted dominion, regulated by wholeſome laws, defined by juſt and determined limits[90], and kept within the view of the

[86] Ὁ δὲ Αὐγοῦστος, ἐνδικαίων μὲν Καλπουρνίου Πεισωνος ἀρξας, ἠξίωσησεν αὐθις, ὥστε μηδεμιαν ἐλπιδα σωτηριας σχειν. πανλα γουν ὡς καὶ τελευτησων διεθέλο, καὶ τας γε ἀρχας, τους τε ἀλλους τους πρωτους καὶ των βουλευτων καὶ των ἱππεων ἀθροισας, διαδοχον μεν ουδενα ἀπεδειξε, καιτοι τον Μαρκελλον παιδων προκριθησεσθαι ες τουτο προσδοκωντων· διαλεχθεις δε τινα αὐτοις περι των δημοσιων πραγμαλων, τῳ μεν Πεισωνι τας τε δυναμεις καὶ τας προσοδους τας κοινας ες βιβλιον ἐγγραψας ἐδωκε, τῳ δ' Ἀγριππᾳ τον δακτυλιον ἐνεχειρισε. Dio Caſſ. 53. 30.

[87] Τοτε δὲ σωθεις, τας διαθηκας ἐσηνεγκε μεν ες το συνεδριον, καὶ ἀναλεξασθαι ηθελησεν, ἐνδεικνυμενος τοις ἀνθρωποις ὁτι ουδενα της ἀρχης διαδοχον καταλελοιπως ἠν. ου μεντοι καὶ ἀπεγνω· ουδεις γαρ ἐπιτρεπεν. Id. ib. 31.

[88] Theſe are enumerated at length, id. ib. 32.

[89] "Nulla in præſens formidine, dum "Auguſtus ætate validus, ſeque et domum "et pacem ſuſtentavit." Tac. Ann. 1. 4.

[90] "Mari oceano, aut amnibus longinquis "ſeptum imperium: regiones, provincias, "claſſes, cuncta inter ſe connexa." Tac. Ann. 1. 9.

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ruling power, was much more honorable to the prince, and beneficial to the people, than a romantic pretenſion to the ſupremacy of the globe, held under the precarious tenure of the ſword, and ſupported only by terror and violence. Though he certainly waged many wars, and brought many foreign nations into ſubjection, yet they were, generally ſpeaking, rather the antient rivals of the empire, than any new ones ſought out by himſelf. For his own part, he ſeems to have ſet but very little value upon military fame; and was ſo tender of diſturbing the peace of his neighbours, that he is ſaid never to have undertaken a war, but upon very juſt and urgent cauſes; and was better pleaſed to make ſure of their obedience, by the more merciful and bloodleſs obligations of oaths and hoſtages[91]. Thus he gained, in fact, more victories by his humanity, than by the ſword; and, by convincing his enemies that it was their own intereſt to acknowledge his power, became "lord of the willing world."

This pacific diſpoſition had ſo fully occupied the mind of Auguſtus, that the temple of Janus was ſhut once oftener in his reign, than it had been quite from the age of Romulus[92]. In conſequence of this univerſal ceſſation of hoſtilities, he was left at full leiſure to attend to the civil concerns of the empire; to take a general ſurvey of his ſubjects, with an account of the public revenues; and to iſſue that celebrated decree, "That all the world ſhould be taxed[93]." By this act of

[91] "Alias nationes male quietas ad obſequium redegit. Nec ulli genti ſine juſtis et neceſſariis cauſis bellum intulit. Tantumque abfuit a cupiditate quoquo modo imperium vel bellicam gloriam augendi, ut quorundam barbarorum principes in æde Martis Ultoris jurare coëgerit, manſuros ſe in fide ac pace quam peterent: a quibuſdam vero novum genus obſidum fœminas exigere tentaverit: quod negligere marium pignora ſentiebat. Et tamen poteſtatem ſemper omnibus fecit, quoties vellent, obſides recipiendi." Suet. in Oct. 21.

[92] "Janum Quirinum ſemel atque iterum a condita urbe memoriam ante ſuam clauſum, in multo breviore tempore ſpatio, terra marique pace parta, ter clauſit." Suet. in Oct. 22. Πλειστον δ' ὁμως ὑπερ παντα ψηφισθεντα οἱ ὑπερησθη, ὁτι τας τε πυλας τας του Ιανου, ὡς και παντων σφισι των πολεμων πεπαυμενων αυλους, εκλεισαν. Dio Caſſ. 51. 20.

[93] Luke ii. 1.

ſovereign

ſovereign authority, which, in its original deſign, bore no relation to the wonderful event which immediately followed, he had the honor of becoming the illuſtrious inſtrument, in the hands of Providence, of preparing the world for the joyful entrance of the Prince of Peace; who, as "in the fullneſs of time," was ſoon to make his appearance upon earth, to diſpel the darkneſs of paganiſm, and proclaim the glad tidings of eternal happineſs to all humble and ſincere believers.

Here then is another remarkable inſtance of the neceſſary, though inviſible, dependence of human affairs upon the Divine Will; and of the ſtrict ſubſervience of the blind and ſelfiſh policy of man, to the "determined counſels and foreknowledge of God." This event, ſo replete with bleſſings, was, indeed, for a time kept ſecret, not only from the world in general, but even from that ſelect and ſingular people, who were honored with the perſonal preſence of this heavenly viſitor. The good effects, however, of that profound and univerſal ſtate of tranquility, which had been the forerunner of him, were ſo ſenſibly felt by the whole empire, that they became a fair ſubject of panegyric for the ſublime and fertile geniuſes of that polite age; and ſerve as ſome excuſe for the popular ſuperſtition, which even deified the prince [94], under whoſe benign government they daily experienced a more ſolid and rational happineſs, than had ever been known in the pureſt ages of the democracy; when they were the moſt uncontrolled repoſitaries and guardians of their own conſtitutional liberties [95].

It

[94] "O Melibœe, Deus nobis hæc otia fecit;
"Namque erit ille mihi ſemper Deus; illius aram
"Sæpe tener noſtris ab ovilibus imbuet agnus.
"Ille meas errare boves, ut cernis, et ipſum
"Ludere, quæ vellem, calamo permiſit agreſti." Virg. Ecl. i. 6.
"Præſenti tibi maturos largimur honores,
"Jurandaſque tuum per nomen ponimus aras,
"Nil oriturum alias, nil ortum tale fatentes." Hor. Ep. 2. 1. 15.

[95] Tiberius ſeems to allude to the general ſenſe the people entertained of their own happineſs, in the following remarkable words, when

 ſpeaking

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It has been the fate of this prince, in common with many others in the ſame exalted ſtation, to be tranſmitted to poſterity in two oppoſite views [96]; both of which being too much diſguiſed by falſe colors, it is as difficult to cleanſe him from the dark ſtains of calumny, as from the gaudy ſmear of adulation. It would be needleſs to repeat what has ſo often been urged on each ſide, upon ſo intereſting and popular a topic; ſuffice it, therefore, to indulge our curioſity with a few obſervations upon one particular part of this celebrated character, which has been the ſubject of more general cenſure; and for which his conduct too often ſupplied occaſion.

As we are not now attempting to draw the ſpotleſs portrait of a patriot king, a prodigy which never exiſted, unleſs in the reveries of viſionary politicians, we are not concerned about what he ought to have been, but to repreſent him as he actually was. If, by throwing a ſhade over thoſe defects, where it can be introduced with propriety, we can ſoften their harſh appearance; if by accounting for ſome dubious inſtances of his behaviour, upon principles that are leſs diſgraceful to the human heart, there may be a chance of approaching nearer to the real truth; we ſhall then enjoy the pleaſing opportunity of doing ſome little juſtice to the memory of a very eminent perſonage; who, with all his blemiſhes, was both an ornament and bleſſing to his country.

All his defamers, whether antient or modern, ſeem, as it were, to have been angry with him, for ceaſing to be a tyrant, becauſe he undoubtedly was ſuch, when he firſt preſumed to place himſelf at the

ſpeaking of their having repeatedly obliged Auguſtus to re-aſſume the reins of government, he adds, Και μαλα εικοτως. τις μεν γαρ ουκ αν ἑλοιτο απραγμονως σωζεσθαι, και ακινδυνως ευδαιμονειν, και των μεν αγαθων των της πολιτειας αφθονως απολαυειν, ταις δε δη φροντισι ταις ὑπερ αυτης μη συνειναι; τις δ' αν αμεινον του Αυγυστου της ιδιας μοιρας, μητοι γε και αλλων ανθρωπων τοσουτων, ηρξεν; Dio Caſſ. 56. 40.

[96] "Apud prudentes, vita ejus varie extollebatur, arguebaturve." Tac. Ann. 1. 9. Their ſentiments are to be found at large in the ſame paſſage.

head

head of the commonwealth; ſtriving to make us believe, that a profound hypocriſy predominated through the very beſt of his actions [97]; as if a man who had been once bad could not poſſibly reform; and every token of repentance for paſt miſconduct were only to add one more vice to his former number.

That Auguſtus wanted that greatneſs of mind, that fearleſs openneſs of heart, which were the peculiar characteriſtics of Julius Cæſar, may be admitted, without being imputed as a crime. The complexion of the ſoul, in its original formation, is no more within a man's own power, than the complexion of his countenance. Both, indeed, may be improved by labor and cultivation; but, in conſequence of certain natural defects, cannot, with all the art of man, be heightened into abſolute perfection.

Allowing him, therefore, to have been inferior in theſe natural endowments, it was, at worſt, only his misfortune. But had he been poſſeſſed of them in a ſtill more exalted degree, the very temper of the times would have prevented him from exerting them in their full latitude. Surrounded as he was with a miſcellaneous multitude, it behoved him to ſtudy their diſpoſitions, and to watch their motions, in order to guard againſt the machinations, either of open enemies, or treacherous friends. The inſtance of his illuſtrious anceſtor, ſtill bleeding before his eyes, who had himſelf fallen a victim to his too great contempt of ſuſpicion, admoniſhed him to beware of the concealed dagger, to ſtifle his reſentment, and look with complacency, even upon his ſuſpected aſſaſſin.

This conſtant reſerve and circumſpection, therefore, was the natural conſequence of that perilous eminence whereon he ſtood; without implying the leaſt malicious deſign againſt the peace and liberties of his country. On the contrary, if actions ſpeak the

[97] "Pietatem erga parentem, et tempora reipublicæ, obtentui ſumpta." Tac. Ann. 1. 10.

man,

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man, we ſhall be well juſtified in affirming, that, tyrannically as he began his career, the virtues of the Prince were a reaſonable atonement for the vices of the Triumvir. When once diſengaged from his pernicious connexions with his abandoned aſſociates[93], and in quiet poſſeſſion of an imperial throne, his life was tainted with fewer groſs blemiſhes, than generally fall to the lot of thoſe, whom Providenee has been pleaſed to intruſt with any portion of ſovereign authority.

A courſe of near forty years indefatigably employed in the faithful adminiſtration of juſtice; in preſerving an immenſe dominion in a general ſtate of union and tranquillity; in cultivating the arts of peace; in improving the comforts and elegancies of domeſtic life; and in the exerciſe of every other benevolent and patriotic virtue; clearly diſplays the real complexion of the heart, and loudly calls upon all mankind to give it full credit for ſincerity.

If to accompliſh theſe beneficial and noble purpoſes; if, the more effectually to govern a ſeditious people, long uſed to all the wildneſs of licentiouſneſs, he found it neceſſary, on occaſion, to ſtudy their inclinations, to temporize with their humors, to reſtrain or conceal his own love of abſolute power, and to alleviate the weight of the yoke, that they might all bear it with greater cheerfulneſs; theſe are no other than the laudable artifices of the moſt conſummate wiſdom; ſuch as the ſoundeſt policy need not bluſh to avow, nor the mildeſt government to practice. To ſtigmatize ſuch behaviour with the odious names of hypocriſy or cowardice, is not only a violation of the firſt principles of common charity; but it is (what the great ſatiriſt knew to be too deeply rooted in the nature of man)

[93] "Multa Antonio, ut interfectores patris ulciſceretur, multa Lepido conceſſiſſe. Poſtquam hic ſocordia ſenuerit, ille per libidines peſſum datus ſit: non aliud diſcordantis patriæ remedium fuiſſe, quam ut ab uno regeretur." Tac. Ann. 1. 9.

a mali-

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a malicious joy in miſconſtruing and inverting the moral qualities of human actions[99].

But had the heart of this illuſtrious prince been ſo truly corrupt, we ſhould never have ſeen the pen of his profeſſed encomiaſt glowing with ſuch rapturous praiſes of political liberty; nor the moſt firm and ſtubborn champion of it that Rome ever beheld, the avowed and irreconcileable enemy of the whole blood of the Cæſars, drawn under that moſt ſublime and majeſtic of all characters, the giver of laws to the bleſſed ſpirits in Elyſium [100]. Much leſs ſhould we have heard the inhuman Mezentius ſo warmly imprecating thoſe calamities, which had undeſervedly fallen upon his innocent and amiable ſon Lauſus; and pathetically confeſſing the juſtice of thoſe puniſhments, which he then ſuffered from the well-grounded reſentment of his much injured people [101]. This is too bold and dangerous a language for a poet to echo in the ears of a tyrant; had Auguſtus, therefore, actually merited that approbrious name, where *now* would have been the works of Virgil? He who reſcued his memory from oblivion, and gave immortality to his muſe, contrary

[99] "At nos virtutes ipſas invertimus, atque
"Sincerum cupimus vas incruſtare.——
——"Hic fugit omnes
"Inſidias, nulloque malo caput obdit oper-
"tum;
"(Cum genus hoc inter vitæ verſamur, ubi
"acris
"Invidia, atque vigent ubi crimina) pro bene
"ſano
"Ac non incauto, fictum aſtutumque voca-
"mus." Hor. Sat. 1. 3. 55, &c.

Obſervations, which apply ſo very cloſely to the caſe before us, that one would almoſt imagine them introduced by this ingenious ſatiriſt, as an oblique anſwer to ſome malevolent aſperſions, which might have been thrown out againſt the character of his princely patron.

[100] "Secretoſque pios, his dantem jura
"Catonem." Virg. Æn. 8. 670

[101] "Idem ego, nate, tuum maculavi cri-
"mine nomen;
"Pulſus ob invidiam ſolio ſceptriſque pa-
"ternis,
"Debueram patriæ pœnas; odiiſque meo-
"rum
"Omnes per mortes animam fontem ipſe
"dediſſem." Æn. 10. 851, &c.

A confeſſion likewiſe which, in a manner, he repeats with his dying breath;

"Scio acerba meorum
"Circumſtare odia." Ib. v. 904.

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to the expreſs will of the too modeſt author, muſt not only have admired his genius, but have applauded his principles.

The prince, therefore, who at once profeſſes himſelf a friend to learning, and an enemy to liberty; who ſtrives to enlighten the underſtanding of his ſubjects, only to make them more ſenſible of their own wretchedneſs; is a monſter, which human nature, pregnant as ſhe is with contradictions, has very rarely exhibited to the eye of the world. It is the bleſſed property of the liberal arts, to mollify the rudeneſs of the manners, and to calm the natural ferocity of the paſſions. The rank and poiſonous weeds of ſlavery will ſhrink and wither away, when overſhadowed by the luxuriant and fertile branches of found literature.

The court of Auguſtus was the true ſeat of politeneſs and humanity; and was adorned with the brighteſt conſtellation of genuine wits, that ever ſhone at the ſame inſtant in any age or country, from the beginning of time. In this ſacred aſylum, every ſcience that could harmonize the mind, or improve the heart, was ſure of being embraced with the moſt cordial affection. Inſpired, himſelf, by a mature education, with the warmeſt zeal for every kind of ingenuous and uſeful knowledge [102], he neither wanted judgment to diſcern real abilities in others, nor generoſity to reward them. To preſide in the aſſemblies of the poets, orators, hiſtorians, and philoſophers, to ſubmit his own productions to their candid and friendly criticiſms, were among the moſt favorite amuſements of his leiſure hours; and while he liſtened with attentive pleaſure to the rehearſals of their elegant compoſitions, his ſmiles gave life to genius, and wings

[102] "Eloquentiam ſtudiaque liberalia ab "ætate prima cupidè et laborioſiſſimè exer- "cuit." Suet. in Aug. 84. "Multa va- "rii generis proſâ oratione compoſuit, ex "quibus nonnulla in cætu familiarium, velut "in auditorio, recitavit." Ib. 85.

to emulation [103]. Honors ſo judiciouſly conferred redounded with double luſtre upon his own character [104]. A mind occupied in ſuch rational and benevolent purſuits, could find no room for the lawleſs ſuggeſtions of ambition or power; but, at perfect eaſe in itſelf, was able to ſtrike even his enemies with awe and reverence; and, without one painful effort, to ſecure to a wide and extenſive empire the ſubſtantial comforts of univerſal peace, and domeſtic happineſs.

Neither was it leſs to his glory to have had a Mæcenas for his friend and counſellor, whoſe houſehold was the conſummate model of refined elegance; where modeſt merit never wanted a patron; where friendſhip dwelt without jealouſy, erudition without contention, wit without petulance; and where the moſt accompliſhed ſcholars of the age were rivals in excellence, without envy [105]. This

[103] "Ingenia omnibus modis fovit. Recitantes et benigne et patienter audivit: nec tantum carmina et hiſtorias, ſed et orationes et dialogos." Suet. in Aug. 89.

[104] "At neque dedecorant tua de ſe judicia, atque,
Munera, quæ multâ dantis cum laude tulerunt,
Dilecti tibi Virgilius Variuſque poetæ."
Hor. Ep. 2. 1. 245.

[105] "Domus hâc nec purior ulla eſt,
Nec magis his aliena malis; nil mî officit unquam,
Ditior hic, aut eſt quia doctior; eſt locus unicuique ſuus."
Ib. Sat. 1. 9. 49.

The ſame poet, in another paſſage, gives this affectionate account of ſeveral of his moſt intimate friends;

"Plotius, et Varius Sinueſſæ, Virgiliuſque
Occurrunt; animæ, quales neque candidiores
Terra tulit, neque queis me ſit devinctior alter.
O, qui complexus, et gaudia quanta fuerunt!
Nil ego contulerim jucundo ſanus amico."
Sat. 1. 5. 40.

And in another he ſeems to have deſcribed, in one view, almoſt the whole ſociety of learned men, with whom he ſpent the beſt part of his life;

"Plotius et Varius, Mæcenas, Virgiliuſque,
Valgius, et probet hæc Octavius optimus, atque
Fuſcus, et hæc utinam Viſcorum laudet uterque.
Ambitione relegatâ te dicere poſſum,
Pollio; te, Meſſala, tuo cum fratre; ſimulque
Vos Bibuli, et Servi; ſimul his te, candide Furni;
Complures alios, doctos ego quos et amicos
Prudens prætereo: quibus hæc, ſint qualiacunque,
Arridere velim: doliturus, ſi placeant ſpe
Deteriùs noſtra."
Ib. Sat. 1. 10. 81, &c.

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is not the policy of real tyrants, whoſe ſovereignty has often no firmer baſis than the ſupineneſs and ignorance of their people; and whoſe intereſt it is to diſcountenance all ſolid learning, and ingenious inveſtigations of the common rights of mankind, that may help to expoſe the weak and rotten foundations of deſpotiſm.

Upon the whole, therefore, after making all reaſonable allowances for the infirmities of human nature in general; for thoſe temptations to which the great and powerful are more particularly expoſed; and for the very defective ideas of moral rectitude, under the imperfect ſyſtem of religion at that time univerſally prevailing; we may venture to pronounce, that the virtues of Auguſtus far outweighed his vices; and to enroll him in the catalogue of thoſe princes, who have been a bleſſing to their country, and an ornament to a throne.

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Of the nature of the Imperial Government.—A further view of it under the reign of Tiberius.

Nature of the Imperial Government.

HAVING pointed out, as minutely as poſſible, the various ſteps by which Auguſtus raiſed himſelf to the head of this immenſe empire, we ſhall now take a nearer view of the nature of that power, that was the immediate conſequence of thoſe encroachments. It muſt be confeſſed, however, that the cautious and ſtudied reſerve, which, either from choice or neceſſity, that prince thought proper to aſſume, through the long ſucceſſion of years, wherein he ſtood the unrivaled maſter of the world, renders it extremely difficult to arrive at that preciſion which the fidelity of hiſtory demands; or to form any thing like a juſt and accurate idea of that ſpecies of government which ſucceeded the commonwealth.

Feeling

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Feeling himſelf, in fact, an abſolute monarch, he found it the wiſeſt policy to conceal the luſtre of ſo invidious a ſtation, behind the veil of humility and moderation. So long, therefore, as the minds of the people were not terrified by a gaudy diſplay of imperial pomp, nor by any injudicious and arbitrary exertions of ſovereign ſway, they wore the chains, without being ſenſible of their weight [1]; and thus flattered their own imaginations with the notion of being themſelves the diſpenſers of thoſe liberties, which they actually derived from his tacit permiſſion alone. With a ſtanding army on one hand, and the public treaſury on the other, he was enabled to ſtretch the line of his power to whatever length his ambition could aſpire [2]; but he thought it more prudent to leave the extent of it quite undefined, and to appear to obtain it from the voluntary conceſſions of his countrymen, rather than to extort it by terror and violence; which would be ſure to render his name and perſon odious, without the leaſt addition to his real authority.

The Roman *Emperor*, according to the ſtrict conſtitutional import of that title only, was not inveſted with any civil power at all. Under this character, even as now annexed in perpetuity, with all its concomitant privileges, he was no more than the military head of this great body; and his province, as ſuch, was confined to the buſineſs of arms, either in repelling foreign invaſions, or ſuppreſſing domeſtic tumults [3]: a power, it is true, very liable to be abuſed, and

[1] "Verſo civitatis ſtatu, nihil uſquam "priſci et integri moris: omnis, exuta æqua-"litate, juſſa principis aſpectare. Nulla in "præſens formidine, dum Auguſtus, ætate "validus, ſeque et domum et pacem ſuſ-"tentavit." Tac. Ann. 1. 4.

[2] Τῳ γαρ ἐργῳ καὶ ναυῶν καὶ διαπαλος αὐλος ὁ Καισαρ, ὰτι καὶ των χρημαῖων κυριων (λεγω μεν γαρ τα δημοσια απο των ἐκεινου απικικρίλο, ἐργῳ δε, καὶ ταῦτα ωρος τὴν γνωμην αὐτῶ ἀνελισσετο) καὶ των στρατιωτων κρατων, ἀδιαρχητον ἐμελλε. Dio Caſſ. 53. 16.

[3] Grav. de Imp. Rom. 3.

Thus ſays Tiberius of Auguſtus, in the character of Imperator, Ὅτις τὸ μεν ὀνομα καὶ ἐμπολεμειν ὠδυν αὐτὸς καὶ φρουρειν καὶ σωζειν ὑπεδέξατο, τἀλλα τὸ ὀνομα καὶ ἀπονεμων ἡμιν ἀπεδωκε; χρῆσιν τε τοιουτων ἀδιακρίτον ωρος τὸ

 προπολεμειν

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and which was ſo in fact. But the ſtate, in appearance at leaſt, ſtill preſerved her antient legiſlative and civil rights, and adminiſtered them all by their reſpective magiſtrates, according to the eſtabliſhed rules of the primitive conſtitution. Whatever active part the emperor choſe to take in the adminiſtration of civil affairs, was done under the cover of his civil titles, and profeſſedly in conjunction with the ſenate. Neither was any change made in the laws of private property, except what occaſional neceſſity required. The aim of Auguſtus, eſpecially, ſeems to have been, ſo to blend the monarchical and democratical forms of government together, as to make the Imperial power both the ornament and ſecurity of the republic; ſo that the people in general might enjoy a ſtate of temperate, modeſt liberty, equally unmoleſted by the audaciouſneſs of the multitude, and the contumely of the great[4]. A plan certainly very wiſe in itſelf, and the moſt beneficial to the intereſts of the ſubjects at large, that the circumſtances and diſpoſition of the times could well admit: and had this mild and politic example been duly reſpected, and uniformly followed by the reſt of his ſucceſſors, Rome, in the ſituation ſhe then was, would have had no cauſe to lament the exchange of an untractable and tumultuous democracy, for a gentle and well-tempered monarchy.

προπολεμειν ὑμων τρεφων, ουδενι των σφετερων λυπηρους αυτους εποιησεν, αλλ' επι μεν το οθνειον φυλακας φοβερωτατους, προς δε το οικειον οπλους, απολεμους ειναι παρισκευασι. Dio Caſſ. 56. 40.

The oration from whence we have borrowed ſeveral of the foregoing anecdotes, though delivered in the words of the hiſtorian, moſt probably contained the real ſentiments of the orator. And as there can be little doubt of his having dwelt upon thoſe virtues which had been the moſt conſpicuous, and the moſt generally known to the whole people, it may deſervedly paſs for a very valuable relique of antiquity, and a juſt repreſentation of the character of that illuſtrious prince; eſpecially as it cannot be conſidered in the light of a mere tribute of flattery to his memory, the moſt ſtriking parts of it being confirmed by the united teſtimony of all the moſt antient hiſtorians.

[4] Την μοναρχιαν δημοκρατιᾳ μιξας, το, τε ελευθερον σφισιν ετηρησε, και το κοσμιον το, τε ασφαλες προσπαρισκευασεν, ὡς' εξω μεν τε δημοκρατικε θρασυς, εξω δε και των τυραννικων ὑβρεων ονταις, εν τε ελευθεριᾳ σωφρονι και εν μοναρχιᾳ αδεει ζην, βασιλευομενους τε ανευ δουλειας, και δημοκρατουμενους ανευ διχοστασιας. Dio Caſſ. 56. 43.

Though

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Though the bleſſings of his equitable government were very gratefully acknowledged by the bulk of the Romans, yet ſome ſeeds of envy and ill-will, ſtill lurking in a few gloomy and diſcontented minds, checked the growth of that public affection and applauſe, which ought to have been unanimous and univerſal [5]. A ſhort experience, however, of the conduct of his deteſtable ſucceſſor, ſoon forced them to pay that debt to his memory, which they had denied to his perſon; and to lament the loſs of thoſe bleſſings, which they knew not how to enjoy when they had them in poſſeſſion [6].

Tiberius, A. D. 14.

So great indeed was the diſſimilitude, ſo ſtriking the contraſt between the two characters, that even the enemies of Auguſtus were fully ſenſible of the difference; and were, therefore, perverſely induced to imagine, that he thus adopted the ſon of Livia, only as a foil, to ſet off his own virtues: a ſuppoſition, much too abſurd as well as injurious to gain any credit, unleſs from prejudice and ignorance [7]. But the truth really was, that his hopes being totally diſappointed by the untimely fate of his two grandſons, Caius and Lucius [8], he found himſelf under a neceſſity of making ſome diſpoſition [9]; and having then no predilection in behalf of any other,

was

[5] Το δε αληθες, ει μεν τω παραχρημα ου πολλοι, υστερον δε παντες ισχον (ſc. πιθος) Dio Caſſ. 56. 43. And again, ſpeaking of his virtues—Ταυτα δε ηπιστατο μεν και ζωντος αυτου, ητι πλειον δ' ομως μεταλλαξαντος, εγνωσαν. και γαρ φιλει πως το ανθρωπειον ουκ ουτω τι ευπαθουν της ευδαιμονιας αισθανεσθαι, ως και δυσυχησαι ποθεν αυτην. οπερ που και τοτε περι του Αυγουστου συνεβη. Τω γαρ Τιβεριω μετ' αυτον ουκ ομοιου πειραθεντες, εκεινον εζητουν. και ην μεν και παραχρημα την μεταβολην της καταστασεως τοις εμφρουσι τεκμηρασθαι. Id. 56. 45.

[6] Δεινως αυθις επενθουν. Id. 56. 43.

[7] Τοσουτον δ' ουν το συμπαν αλληλων διηνεγκαν, ωστε τινας και ες τον Αυγουστον υποπτευσαι, ότι εξεπιτηδες τον Τιβεριον, και περ ευ ειδως οποιος ην, διαδοχον απεδειξεν, ινα αυτος ευδοκιμηση. Ταυτα μεν δη ουν υστερον διαθρειν ηρξαντο. Id. 56. 45.

—"etiam ambitione tactum, ut tali ſucceſſore deſiderabilior ipſe quandoque fieret." Suet. in Tib. 21.

"Ne Tiberium quidem caritate, aut reipublicæ cura ſucceſſorem adſcitum: ſed quoniam arrogantiam, ſævitiamque ejus introſpexerit, comparatione deterrimâ ſibi gloriam quæſiviſſe." Tac. Ann. 1. 10.

[8] Suet. in Oct. 65, and in Tib. 15.

[9] This ſeems to be ſufficiently clear, from what Suetonius ſays of his will: "Teſtamenti initium fuit, quoniam finiſtra fortuna Caium et Lucium filios mihi eripuit, Tiberius Cæſar mihi ex parte dimidia et ſextante

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was more eaſily overcome by the importunities of his wife, to give a preference to her own favourite ſon [10]. Senſible as the old emperor ſeems to have been of the failings of his new heir, yet he fancied, at leaſt, that he had diſcovered many virtues in him, which, upon a fair compariſon, would be likely to compenſate for his faults [11]: a partiality very naturally reſulting from the imbecillity of old age, and from an uxorious fondneſs for an artful and ambitious woman.

It is not to be denied, that Tiberius, by the advantages of a very liberal education [12], was endowed with many acquired accompliſhments, which might have paſſed very well with the world, and, perhaps, have made him even a tolerable prince, had not his nature been an utter ſtranger to every humane and virtuous ſentiment. In his firſt appearance before the people, then weeping over the remains of their beſt benefactor, and common parent, he was laviſh in every topic of praiſe, that could endear and immortalize his memory [13]. Not indeed from any real feelings of the influence of ſo worthy an example; but with a view of beguiling the fears of a dejected multitude; and of flattering their hopes, that he, who was able to give ſuch ſtrong and pleaſing colorings to the portrait, could not fail himſelf to copy ſo perfect an original. But ſo deep a root had diſſimulation taken in his heart, that almoſt every action of his

" ſextante hæres eſto. Quo et ipſo aucta eſt " ſuſpicio opinantium, ſucceſſorem adſcitum " eum neceſſitate magis, quam judicio; quando ita præfari non abſtinuerit. In Tib. 24.

10 " Druſo pridem extincto, Nero ſolus e " privignis erat: illuc cuncta vergere. Filius, " collega imperii, conſors tribunitiæ poteſtatis adſumitur, omneſque per exercitus " oſtentatur: non obſcuris, ut antea, matris artibus, ſed palam hortatu." Tac. Ann. 1. 3.

11 " Adduci tamen nequeo," ſays the biographer, " quin exiſtimem circumſpectiſſimum et prudentiſſum principem, in tanto " præſertim negotio, nihil temerè feciſſe: ſed " vitiis Tiberii virtutibuſque perpenſis, potiores duxiſſe virtutes." Suet. in Tib. 21.

12 Τιβεριος ευπατριδης μεν ην, και ευπαιδευτο, φυσει δε ιδιοτατη εκεχρητο. Dio Caſſ. 57. 1. The whole of the character of this emperor is here very finely drawn, but too long to be inſerted.

13 See his Funeral Oration, ſo often before alluded to.

life was the direct reverſe of what he profeſſed [14]; and it even became a maxim with him, that a prince, who meant to be independent, ſhould never diſcloſe his real thoughts [15].

It may indeed be alleged, that in this reſpect Tiberius only followed the example of his predeceſſor. But, to make the parallel juſt and applicable throughout, proper regard ſhould be had to the very different ſituations of the two princes; to the motives of their actions, and to the conſequences from thence reſulting. Auguſtus began his political career under every poſſible diſadvantage. His early connexions were of the moſt odious kind; he had himſelf taken a very active part in the public calamities; and had riſen to greatneſs upon the ruins of the moſt reſpectable families in Rome. Time and reflexion ſoon inſtructed him, that prejudices derived from ſuch cauſes could not be removed without the utmoſt difficulty. Though fear, hope, or other meaner inducements, had attached the majority of the people to his intereſts, there were many yet who hated his perſon, or envied his fortune.

Theſe embarraſſments ſuggeſted the uſe of various artifices, which a prince of a leſs cautious temper would have diſdained. But as he does not appear, in all this, to have acted under the influence of any bad principle; and, on the contrary, to have exerted whatever power he thus obtained, towards the re-eſtabliſhment of the peace of his country, he ſurely deſerves ſomewhat milder treatment, than he has uſually received from the more ſevere cenſors of later times. His conduct, if not within the ſtrict line of moral rectitude, was, at worſt, no more than one of thoſe efforts of worldly policy, which was dictated by neceſſity, rather than choice; which had the welfare of the public for its object, as well as his own; and conſequently cannot, with any color of juſtice, be

[14] Ουτε ὡν επεθυμει προσεποιειτο τι, και ὡν ελεγεν, ουδεν ὡς ειπειν εβουλειτο· αλλ' εναντιωτατους τη προαιρεσει τους λογους ποιουμενος, παν τε ὁ επροθει ηρειτο, και παν ὁ ειμισει προετεινετο. Dio Caſſ. 57. 1.

[15] Το, τε συμπαν, ουκ ηξιου τον αυταρχουντα καταδηλον ὡι φρονει ειναι. Id. ib. Thus likewiſe ſays another very judicious hiſtorian, "Tiberio, etiam in rebus quas non occuleret, ſeu naturâ, ſive aſſuetudine, ſuſpenſa ſemper et obſcura verba." Tac. Ann. l. 11.

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charged to the account of ſtudied hypocriſy; a vice, of all thoſe which degrade the frail nature of mankind, the moſt unfriendly to the general intereſts of ſociety.

But Tiberius ſet out with more auſpicious proſpects. He took poſſeſſion of the throne by the ſpecial recommendation of Auguſtus himſelf; was quietly inveſted with the imperial power, which, from the former mild and prudent uſe of it, had now acquired a conſiſtence, and was almoſt as quietly ſubmitted to, as if it had been the conſtitutional mode of government. But, though he might have thrown off the maſk with little danger, he took delight in impoſing upon the credulity of the world by a ſpecious outſide, while he was ſecretly plotting againſt the lives and liberties of the good and virtuous; and privately indulging himſelf in every vicious pleaſure that could defile a rational being. During this interval, he practiſed hypocriſy almoſt by rule, and was the moſt complete proficient in this abominable vice, that is to be found among the records of human depravity.

Having taken care to ſecure the allegiance of the army in the more diſtant provinces, the new emperor appeared at Rome with a ſmall guard only about his perſon; and pretending to be afraid that the populace might ſeize the body of Auguſtus, and commit it to the flames in a tumultuous manner, as they had done that of Julius Cæſar, he obtained an additional reinforcement from the ſenate[27]; but ſtill called them the ſoldiers of the republic, not his own[28].

Thus, fully ſecure of his darling object, this artful diſſembler ſtill affected every kind of delay, and expreſſed the greateſt reluctance to the burden which was forced upon him by a clamorous aſſembly; who were too ſenſible of their own feeble and precarious ſituation, to take it up themſelves. He urged every objection that might reaſonably juſtify his refuſal, even his advanced age, and the

[27] Τους δε σωμαλοφυλακας αμφ' αὐλον ηδη ειχων, εδιδου δη της γερουσιας συναρασθαι οι, ὡστε μηδεν βιαιον εν τη του σωμαλος αὐλου ταφη παθειν. εδιδιε γαρ δηθεν, μη τινες αὐλο ἁρπασανλες, εν τη αγορα, ὡσπερ του Καισαρος, καυσωσι. Dio Caſſ. 57. 2.

[28] Εφη, οτι και οι γρατιωται ουκ εμοι, αλλα δημοσιοι εισι. Id. ib.

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weakneſs of his eye-ſight [19]. He declined the titles of Imperator, and of "Pater Patriæ," when preſſed upon him by the people, and was very ſparing in the uſe even of that of Auguſtus, though heir to his fortune [20]. He ſpoke of the empire with horror, as of a monſter too fierce and untractable for him to manage; requeſting to have ſome partners aſſigned him to ſhare his toils: and, when ſeeming to be vanquiſhed by the urgent ſolicitations of the ſenate, he pretended to accept it only for a time, upon condition of being permitted to lay down the ſervile load, whenever they ſhould pleaſe to indulge him with the liberty of withdrawing from this buſy ſcene of life, to ſpend his old age in tranquillity and retirement [21]. Such were

[19] Ταυτα μεν ουν ουτως επρασσε, και τα της αρχης ερρωτο αλλως διοικων, ηρειτο μηδεν αυτος διοδαι και το μεν πρωτον και ωασαν αυτην δια τε την ηλικιαν (ις γαρ και πεντηκοστα ετη εγεγονει) και δι' αμβλυωπιαν (πλειστον γαρ τω σκοτως βλεπων, ελαχιστα της ημερας εωρα) εξιτασθαι ελεγεν. Dio Caſſ. 57. 2.

[20] Μη λογων αθλιοκρατιαν εναι. ψηφιζονται γαρ αυτω και τασσο μαλα των αλλων ονομασιων, ουκ εδεξατο· και τον κληρον του Αυγουστου λαβειν, την μεγιστην αυτου τυχην ουκ ηθελε. Dio Caſſ. 57. 2. "Nomen *Patris Patriæ* Tiberius a populo ſæpius ingeſtum, repudiavit." Tac. Ann. 1. 72. "Prænomen quoque *Imperatoris*, cognomenque *Patris Patriæ*, et civicam in veſtibulo coronam recuſavit. Ac ne *Auguſti* quidem nomen, quanquam hæreditarium, ullis niſi ad reges ac dynaſtas epiſtolis, addidit." Suet. in Tib. 26.

[21] The whole of this well-acted farce is finely deſcribed by the Latin hiſtorian; "Principatum, quamvis neque occupare conſeſtim, neque agere dubitaſſet, et ſtatione militum, hoc eſt, vi et ſpecie dominationis aſſumptâ, diu tamen recuſavit impudentiſſimo animo: nunc adhortantes amicos increpans, ut ignaros quanta bellua eſſet imperium: nunc precantem ſenatum, et procumbentem ſibi ad genua, ambiguis reſponſis, et callidâ cunctatione ſuſpendens: ut quidam patientiam rumperent, atque unus in tumultu proclamaret, *aut agat, aut deſiſtat*: alter coram exprobraret, *cæteros quod polliciti ſint, tardè præſtare, ſed ipſum quod præſtet, tardè polliceri*. Tandem quaſi coactus, et querens *miſeram et oneroſam injungi ſibi ſervitutem*, recepit imperium: nec tamen aliter quam ut depoſiturum ſe quandoque ſpem faceret. Ipſius verba ſunt hæc; *dum veniam ad id tempus quo vobis æquum poſſit videri, dare vos aliquam ſenectuti meæ requiem*." Suet. in Tib. 24.

Thus likewiſe ſays Tacitus of the ſame tranſaction; "Verſæ inde ad Tiberium preces, et ille variè differebat, de magnitudine imperii, ſua modeſtia. Solam divi Auguſti mentem tantæ molis capacem: ſe in partem curarum ab illo vocatum, experiendo didiciſſe, quam arduum, quam ſubjectum fortunæ, regendi cuncta onus. Proinde in civitate tot illuſtribus viris ſubnixa, non ad unum omnia deferrent; plures facilius munia reip. ſocietatis laboribus executuros." Tac. Ann. 1. Επειτα δε πειθουμενος τε τινας και συναρχοντας—ην. Dio Caſſ. 57. 2.

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the arts, by which this inſidious diſſembler eſtabliſhed himſelf in the ſeat of power; and, thus ſecure, reduced all the remaining ſubſtance of the antient republic to a faint and flitting ſhadow.

Careful, however, to avoid making any ill impreſſion upon the minds of his ſubjects, eſpecially during the life of Germanicus, of whoſe amiable and popular character he was extremely jealous [22], he began his reign with an appearance of the greateſt modeſty and humility [23]; ſubmitting with patience to the tongue of calumny, and affecting to conſider libelling as the privilege of a free ſtate [24]. The ſenate and magiſtrates being ſtill permitted to retain the ſhew of their former dignity and power, he referred matters of the moſt trifling moment to the judgment of the fathers [25]; made no complaint even when their opinion went againſt him [26]; and ſuffered every thing to be adminiſtered by the magiſtrates, according to the ordinary courſe of law [27].

Here let it be remembered, that whatever power the moderate policy of Auguſtus had reſerved to the antient "comitia" expired with him, and was transferred altogether, by Tiberius, to the ſenate [28].

[22] Ἐν τοιαύτῃ αὐτὸν τροπῇ, ἐφ' ὅσον ὁ Γερμανικὸς ἔζη, διήγαγεν. Dio Caſſ. 57. 7.

[23] "Liberatus metu, civilem ſe admodum "inter initia, et paulo minus quam priva-"tum egit." Suet. in Tib. 26.

[24] "Sed et adverſus convicia maloſque "rumores et famoſa de ſe ac ſuis carmina "firmus ac patiens, ſubinde jactabat, *in* "*civitate libera linguam mentemque liberas* "*eſſe debere*." Ib. 28.

[25] "Quin etiam ſpeciem libertatis quan-"dam induxit, conſervatis ſenatui ac ma-"giſtratibus et majeſtate priſtina et poteſ-"tate: neque tam parvum quidquam, neque "tam magnum publici privatique negotii "fuit, de quo non ad P. C. referretur." Ib. 30. Αὐτὸς μὲν καθ' ἑαυτὸν ἢ ἰδίᾳ ἢ συλλήβδην ἁπάντα δὲ δὴ καὶ τὰ σμικρότατα ἐς τὸ τῶν γερουσιαστῶν ἐπέφερε, καὶ ἐκείνη ἐκοινοῦτο. Dio Caſſ. 57. 7.

[26] "Quædam adverſus ſententiam ſuam "decerni ne queſtûs quidem eſt." Suet. in "Tib. 31. Ἐς τὸ μέσον τὴν ἑαυτοῦ γνώμην τιθεὶς, οὐκ ὀκνῶς αὐτοῖς αὐτὴν κεῖσθαι τὴν παῤῥησίαν ἐνεμοῦ· ἀλλὰ καὶ τἀναντία ἐνίοτε ὅτι ὑφιζόμενον τῶν ἐκείνοις. Dio Caſſ. 57. 7.

[27] "Cætera quoque non niſi per magiſ-"tratus et jure ordinario agebantur." Suet. in Tib. 31.

[28] "Tum primùm e campo comitia ad "patres tranſlata ſunt. Nam ad eam diem, "etſi potiſſima arbitrio principis, quædam "tamen ſtudiis tribuum fiebant. Neque po-"pulus ademptum jus queſtus eſt, niſi inani "rumore." Tac. Ann. 1. 15.

Mention,

Mention, indeed, is made of "comitia" for the appointment of conſuls, in this and ſome following reigns; but the hiſtorian himſelf, who lived ſo near the time, ſeems to underſtand very little of their nature and uſe; and concludes with obſerving, that the greater their preſent appearance of liberty, the ſurer was it to terminate in a more pernicious ſlavery[29].

From this time, therefore, the people loſt ſight of their old popular aſſemblies, except only for a ſhort moment, when Caligula made a feint to revive them[30]; but he himſelf very ſoon either ſuppreſſed, or ſuffered them to drop into diſuſe[31]; after which, few certain traces of them are to be found in hiſtory. It is true, that we read of princes, who, on their election to the conſulſhip, were preſented in ſolemn form before the people[32]; but this was not deſigned as any compliment to their primitive conſtitutional character; nor was it done with any view of reſtoring their right of

[29] "De comitiis conſularibus, quæ tum "primum illo principe, ac deinceps fuere, vix "quidquam firmare auſim.—Specioſa ver-"bis, re inania, aut ſubdola: quantoque "majore libertatis imagine tegebantur, tan-"to eruptura ad infenſius ſervitium." Tac. Ann. 1. ſub fin. The Greek hiſtorian likewiſe ſpeaks of them to the ſame effect, when ſummoned for the appointment of conſuls; Ὥστε τι εικοτ δοκειν γιγνεσθαι, εσιουσης επιδικυυσης. Dio Caſſ. 58. 20.

[30] "Tentavit et comitiorum more revo-"cato, ſuffragia populo reddere." Suet. in Cal. 16. Τας αρχαιρεσιας τω τε δημω και τω πληθει αποδιδους, λυσας ὰν περι αυτων ὁ Τιβεριος ὡρικει. Dio Caſſ. 59. 9.

[31] Τον δε δη Δομιτιον τον συναρχοντα αυτω, λεγω μεν ὁ δημος, εργω δ' αυτος ειλετο. αποδους μεν γαρ τας αρχαιρεσιας αυτοις· ὁτι δε εκεινων αργοτερον τι (ὑπο τω πολλω χρονω μηδεν ελευθερως κεχρηματικεναι) ες το δρᾶν τι των προσηκοντων σφισιν οντων, και των συνδαρχιοντων, μαλιστα μεν μη πλειονων η ἑνος αἱρισθαι ἐδει επαγγελλοντων, ει δε ποτε και ὑπερ τον αριθμον γενοιντο, διομολογουμενων προς αλληλους το μεν σχημα της δημοκρατιας σωζεσθαι, εργον δ' ενδεν αυτοις εγιγνετο. Dio Caſſ. 59. 20.

[32] Thus Vitellius; "Comitia conſulum "cum candidatis civiliter celebrans, omnem "infimæ plebis rumorem, in theatro ut "ſpectator, in circo ut fautor affectavit." Tac. Hiſt. 2. 91. But ſtill, to leſſen their conſequence, he ordained that they ſhould be held only every ten years. "Comitia in "decem annos ordinavit, ſoque perpetuum "conſulem." Suet. in Vit. 11. Domitian likewiſe, upon a certain occaſion, was thus publicly announced to the people by the herald; but this being done by a wrong title, the tyrant put to death one of his near relations, "Occidit et—Flavium Sa-"binum, alterum e patruelibus, quod eum "comitiorum conſularium die deſtinatum, "perperam præco non *conſulem* ad populum, "ſed imperatorem pronuntiâſſet." Suet. in Dom. 10. Grav. de Rom. Imp. 15.

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ſuffrage, or even of approbation; but only to gratify a ſelfiſh vanity, by an idle diſplay of their own grandeur; and to attract the wanton acclamations of a thoughtleſs populace, aſſembled in the theatre, or in ſome other place of public reſort. Whatever ſemblance, therefore, theſe few flattering inſtances may bear of a reſtitution of popular power, they were no more than the feeble ſhoots from a decayed trunk, which ſpring forth and look green for awhile, but die away upon the firſt infectious blaſt.

The pretence of Tiberius, for making this material change in the conſtitution, was founded upon this plauſible reaſon, that the empire was now ſo much enlarged, and the citizens become ſo very numerous, that they could not be called together upon every occaſion, without great inconvenience and tumult. His real aim, however, was to extinguiſh the poor remains of the old republican ſpirit, to which the Claudian family had always borne an hereditary hatred; and thus to get rid of the only obſtacle, that checked the free exerciſe of his arbitrary will and pleaſure. As to the ſenate, by his natural influence, as the head of it, and by the allurements of honors and riches on the one hand, and the terrors of military force on the other, he foreſaw no difficulty in reducing *that* to a ſtate of the moſt implicit ſubmiſſion [13]. This once venerable body, every member of which bore an equal rank with the firſt potentates of the earth, ſoon degenerated into a ſervile, puſillanimous herd, the mere creatures of a worthleſs and profligate prince; totally deſtitute of that genuine Roman virtue and ſpirit, which, in antient times, had ſo nobly and ſucceſsfully reſiſted the rudeſt aſſaults of vice and corruption, and had inſured them the dominion of the world. It had now loſt all its original luſtre; and though ſtill indulged with the

[13] Thus ſays Tacitus of them, "At Romæ "ruere in ſervitium conſules, patres, eques; "quanto quis illuſtrior, tanto magis falſi "ac feſtinantes." Tac. Ann. 1. 7.

right of legiſlation, yet the exerciſe of that power being ſubject to the controul of a prince, who could be abſolute whenever he pleaſed, it enjoyed, in effect, no more than a precarious, unſubſtantial liberty; and ſerved only the ſame wretched purpoſes which the parliaments of France do at this day, to regiſter their monarch's pleaſure, and to give a ſanction to thoſe laws, which entail eternal ſlavery both upon themſelves and poſterity.

But, notwithſtanding this actual predominancy of abſolute power, the Roman conſtitution, in point of exterior form, ſtill wore the garb of ariſtocracy; ſo as to come very properly within the deſcription given of it by a late learned Italian; who calls it "a repub-" lic of nobles, the military head of which was the emperor; the " civil, the conſul; and the entire body, the ſenate[34]:" and thus the traces of expiring liberty were preſerved for a while[35], in the oſtenſible majeſty of the ſenatorial aſſembly, and in the antient and ſplendid titles of the civil magiſtrates[36].

Even the people, though now humbled and degraded from their former rank in the ſtate, and ſhare in the adminiſtration, were ſtill formidable by their numbers: their in-bred hatred of all violent exertions of ſovereignty was not yet thoroughly extinguiſhed, though too feeble to ſhew itſelf with effect; and, if too much oppreſſed, there might have been danger of their ſeeking a remedy from deſpair. Prudence, therefore, taught many of the ſucceeding princes to treat every order of the nation with a proper degree of reſpect and attention; to regulate their own behaviour by the laws of the land; and, by maintaining the authority of the ſuperior magiſtrates, to ſupport their own. From hence the commands of the prince came to be conſidered not as the dictates of a monarch, but as the concurrent voice of the whole magiſtracy.

[34] Grav. de Imp. Rom. 15.

[35] "Manebant etiam tum veſtigia morientis libertatis." Tac. Ann. 1. 74.

[36] Grav. O. J. 1. 104.

Theſe

BOOK III.

Theſe wiſe maxims of policy were obſerved, for a time, even by Tiberius. Though he every day grew more of the ſovereign[37], and though extremely fickle in all his motions, he ſometimes exerted his power to very laudable ends; ſo as to reſcind ſeveral improper conſtitutions of the ſenate; to keep a ſtrict eye over the magiſtrates, and ſee that juſtice was duly adminiſtered, according to the eſtabliſhed principles both of law and religion. He would likewiſe, upon occaſion, ſit as judge himſelf, in a tribunal purpoſely erected in the Forum, where he delivered his own opinion as preſident of the court; and, in imitation of Auguſtus, would call in aſſeſſors to adviſe him in queſtions of difficulty[38].

Thus far, therefore, little inconvenience was felt, or danger apprehended, from the late alteration. The hitherto gentle deportment of the prince, his conſtant profeſſions of moderation[39], the general freedom of debate, and legiſlative power, ſtill exerciſed by the ſenate[40], concealed from the eyes of the people that dangerous rock, on which their deareſt liberties were ſoon to be caſt away. So certain is it, that no ſtate can be truly called free or happy, whoſe political ſecurity has no better baſis than the ſole pleaſure of a ſingle ruler; who, if not a tyrant by inclination, is always liable to errors of

[37] "Paulatim principem exeruit, præſtitque: etſi varium diu, commodiorem tamen ſæpius, et ad utilitates publicas proniorem. Ac primo eatenus intervenibat, ne quid perperam fieret. Itaque et conſtitutiones quaſdam ſenatus reſcidit: et magiſtratus pro tribunali cognoſcentibus plerumque ſe offerebat conſiliarium—judices—legum et religionis, et noxæ de qua cognoſcerent, admonebat: atque etiam, ſi qua in publicis moribus deſidia aut mala conſuetudine labarent, corrigenda ſuſcepit." Suet. in Tib. 33.

Εδικαζε μεν νυ,—επιφοιτα δε και επι τα των αρχοντων δικαστηρια, και παρακαλημενος υπ' αυτων και απαρακλητος· και εκεινους μεν εν τη ἑαυτων χωρᾳ καθησθαι, αυτος τε επι του βαθρου του καταντικρυς αφνειμενου καθιζων, ελεγεν ὁσα εδικει αυτῳ, ὡς προεδρος. Dio Caſſ. 57. 7.

"Nec patrum cognitionibus ſatiatus, judiciis aſſidebat,—ſed dum veritati conſulitur, libertas corrumpebatur." Tac. Ann. 1. 75.

[38] Επεποιητο μεν βημα εν τη αγορᾳ, εφ' ου προκαθιζων εχρηματιζε, και συμβουλους αει, κατα τον Αυγουστον, παρελαμβανεν. Dio Caſſ. 57. 7.

[39] Ουτε δισποτην ἑαυτον τοις ελευθεροις, ουτε αυτοκρατορα, πλην τοις γρατιωναις, παλαι εφη. —— Προκριτος τε της γερουσιας υφ' ἑαυτῳ ονομαζετο, και πολλακις γε ελεγεν, οτι, δισποτης μεν των δουλων, αυτοκρατωρ δε των γρατιωτων, των δε δη λοιπων προκριτος ειμι. Dio Caſſ. 57. 8.

[40] Grav. de Rom. Imp. 20.

judgment,

judgment, or to the ſeductions of ambition; and, if ever ſo mild and uncorrupt, cannot be ſure of tranſmitting his virtues to his ſucceſſor, together with his power.

Tiberius, who, from prudential motives alone, had hitherto impoſed upon the world, under the maſk of goodneſs, to which his nature was a ſtranger, being once releaſed from reſtraint, abandoned himſelf to every cruel and licentious paſſion. He revived, and gave a new turn to, the laws of high-treaſon[41]; enforcing them with the utmoſt ſeverity, not only againſt thoſe who had offered any affront to Auguſtus or Livia, but to himſelf. Children and ſlaves were tortured, to oblige them to accuſe their parents and maſters; informers were enriched with the goods of the condemned, and encouraged to purſue that odious occupation, by the hopes of rewards and honors[42].

At length, diſguſted with a world, to which he was deſervedly the object of abhorrence and execration, he exchanged the active ſcenes of the buſy capital, for the voluptuous and effeminate retreats of a ſolitary iſland; where he waſted the remains of an unprofitable and guilty life, in a courſe of the moſt brutal profligacy and ſenſuality, ſuch as the pen of decency dares not commemorate: growing daily more infamous, in proportion as age and impotence weakened the powers of enjoyment; and deſire, bereft of ability, rendered a perſeverance in debauchery not only deteſtable, but ridiculous. Born with a flexibility of diſpoſition, that could in a moment accommodate itſelf

[41] "Legem majeſtatis reduxerat, cui nomen apud veteres idem, ſed alia in judicium veniebant, ſi quis proditione exercitum, aut plebem ſeditionibus, denique male geſta republica majeſtatem populi Romani minuiſſet. Facta arguebantur, dicta impune erant." Tac. Ann. 1. 72.

[42] Τιβιριος δε, επει το αφιδρυτον ουκετ' ειχεν, ες τον τοιουτον τον προσθεν ειργασμενον αυλη, πολλων ολων και παλαι, πιπρησκη. τα τε γαρ αλλα αγριως ηξει, και τους της ασεβειας δικας, ει τις ουχ' οσον ες τον Αυγουστον, αλλα και ες αυλον εκεινον την τε μητερα αυτου, φραξας τι η και ειπων απεπτηδησεν επεκλωθε, δεινως επεξηει. εβασανιζοντο δε ουχι ελευθεροι μονον και των ιδιων δουλων, αλλα και ελευθεροι και πολιται. δι τι καλυψησαιτο η και καθαμαρτησαιτο τινων, τας ουσιας των αλισκομενων διαδεγχεσθαι, και φροσιτι και αρχας και τιμας προσλαμβανειν. Dio Caſſ. 57. 19.

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to the moſt oppoſite extremes, he counterfeited either virtue or vice with ſuch wonderful facility and addreſs, that he appeared wholly devoted to that, which he had aſſumed only for a particular occaſion [43]. By a ſhameful abuſe and miſapplication of very excellent talents, which nature had liberally beſtowed, and art as carefully improved, he became a terror and peſt to his country, of which, with equal eaſe, he might have been the comfort and ornament. But his whole life was a contradiction to itſelf. Alike inſincere and deceitful in the practice both of good and evil, he extinguiſhed that mutual confidence, which ought ever to ſubſiſt between a ſovereign and his ſubjects; diſſolved every tie of political union; and, at his death, left the conſtitution an immenſe wreck, adrift upon the ſea of anarchy, without helm or compaſs.

The monarchical power having, as we have now fully ſeen, ariſen chiefly out of the accidental confuſions of the ſtate, and having gradually gathered ſtrength, more from the fears and inattention of the other branches of the legiſlature, than from the determined policy of the original authors of theſe revolutions, the ſucceſſion was never regulated by any fixed principle; but, upon any ſudden demiſe, uſually lay at the mercy of chance. Sometimes it was tranſmitted by the intrigues of the reigning emperor, who contrived to nominate his own ſucceſſor, or to aſſume him into partnerſhip with himſelf, with the right of ſurvivorſhip. But more frequently it became the prey of a ſeditious and lawleſs army; who conferred it upon ſuch as were beſt able to gratify their avarice, or beſt diſpoſed to encourage their inſolence; and they ſeldom failed to find a ſenate ſufficiently obſequious, to give a full ſanction to theſe irregular nominations.

[43] Πλησας μεν αρετας, πλησας δε κακιας ιχνη, και ικαλιραις αυλαις, ως και μοναις, κεχρημενος. Dio Caſſ. 58. 28.

To

To do them juſtice, however, ſeveral of theſe, by whatever means elected, became the brighteſt ornaments of the throne they filled. Born without hopes of a crown, they were not corrupted by that narrow, partial, and vicious education, ſo common with princes. The general felicity of their people was the peculiar object of their concern: and thus did the Romans, at various intervals, enjoy every comfort of domeſtic ſecurity, that could have been derived from the moſt perfect and beſt-guarded form of government in the world.

But the ſublimeſt virtues could not protect even the moſt virtuous againſt the murderous hands of treaſon; and their places were too often ſupplied by others, who, ſo far from being adorned with thoſe accompliſhments that could recommend them to a throne, were deformed by every vice that could be a reproach to human nature. It is true, indeed, that the ſame hands, by which they had been ſo wantonly exalted, as ſuddenly depoſed them, and "laid their honors in the duſt." Their ſubjects, juſtly provoked by their accumulated oppreſſions, diſowned them for their ſovereigns; eraſed their acts from the records of the ſtate; defaced their images; declared them public enemies to their country; and put them to ignominious deaths: puniſhments, which, though deſervedly inflicted, ſerved rather to gratify revenge, than to redreſs injuries. Each of theſe tyrants, however ſhort his reign, ſeldom wanted time to give ſome freſh wound to a broken and declining conſtitution; till, at laſt, imperial deſpotiſm, though not formally adopted or acknowledged by the legiſlature, became the only operative principle of the Roman government; as will clearly appear from a curſory view of the political characters of the ſucceeding emperors, for the two following centuries.

CHAP. V.

A general view of the political characters of the ſucceeding Emperors, to the reign of Alexander Severus.

BOOK III. Caligula, A. D. 37.

THE death of Tiberius filled the hearts of the Roman people with the moſt extravagant tranſports, as if their miſeries were approached to their final period, beyond any poſſible danger of a future renewal. The unbounded munificence, the polite carriage, and liberal profeſſions of Caligula[1], when contraſted with the inſatiable avarice, the unſocial pride, and ſullen miſanthropy of the extinct tyrant, encouraged theſe deluſive hopes, and made the acceſſion of this young prince appear as a public bleſſing: they impoſed upon the diſcernment of the ſenate; and induced them, without weighing the conſequences, to inveſt him with the ſame abſolute powers, which had been already enjoyed by his predeceſſors[2]: and to ſacrifice hecatombs of bleeding victims, in commemoration of this diſgraceful deſertion of their own natural liberties.

But this flattering gleam of comfort was obſcured by a ſudden reverſe, the more terrible, as it was leſs expected. By convincing his ſubjects that he knew what belonged to the duties of a good prince, he rendered his ſubſequent cruelty ſtill more provoking[3]: by heightening their ſenſibility of happineſs, he ſharpened the edge of

[1] "Incendebat et ipſe ſtudia hominum "omni genere popularitatis." Suet. in Cal. 15. Προς δε, τα καλαλειφθεντα απ' αυτου παντα, ως και παρ' ἑαυτου δη, τοις τε αλλοις, απορους, μεγαλοψυχιας τινα δοξαν παρα τοις πολλοις ειληφαλο. Dio Caſſ. 59. 2.

[2] "Ingreſſo urbem (ſc. Caio) ſtatim conſenſu ſenatus, et irrumpentis in curiam "turbæ, irritâ Tiberii voluntate, qui teſtamento alterum nepotem ſuum prætextatum adhuc cohæredem ei dederat, *jus* "*arbitriumque omnium rerum illi permiſſum* "*eſt*, tanta lætitia, ut tribus proximis menſibus, ac ne totis quidem, ſupra 160,000 "victimarum cæſa tradantur." Suet. in Cal. 14.

[3] "Hactenus quaſi de principe, reliqua "ut de monſtro narranda ſunt." Suet. in Cal. 22.

their

their miſery: and, by tantalizing their longing appetites with the ſweet reliſh of liberty, made the cup of ſlavery more bitter and unpalatable. Not content with a ſilent diſobedience to the laws of his country, he openly claimed an exemption from all legal obligation whatever; thinking nothing too much for a people to bear, which was within the compaſs of his power to enforce[4]. Inſenſible to the pleaſure of poſſeſſing the love of his ſubjects, he defied their hatred, ſo long as he could excite their fears[5]; and, as if his own deſpotiſm were not a ſufficient affliction, lamented that his reign was not diſtinguiſhed by ſome epidemical calamities[6]. The very ſcenes of his amuſement and recreation were polluted with blood; and an executioner made a neceſſary part of the retinue at his feaſts, where queſtions of the moſt ſerious import were determined by the conviction of torture[7].

In proof of the natural oppoſition ever ſubſiſting between learning and tyranny, he declared himſelf an enemy to literary merit in all ages. Impelled by this envious principle, he demoliſhed the ſtatues erected to the memory of many illuſtrious men, and preſerved by Auguſtus with the moſt reverend care; defacing them beyond the poſſibility of reparation; and forbidding the future erection of any others, without his expreſs conſent. He meditated the abolition of the poems of Homer, for the vain ſatisfaction of exerciſing the ſame liberty as Plato, who had been pleaſed to exclude this firſt-

[4] "Immaniſſima facta augebat atrocitate verborum. *Nihil magis in natura ſua laudare ſe, ac probare* dicebat, *quam*, ut ipſius verbo utar, *αδιατρεψιαν*. Monenti Antoniæ aviæ, tanquam parum eſſet non obedire; *memento*, ait, *omnia mihi et homini licere.*" Suet. in Cal. 29.

[5] "Tragicum illud ſubinde jactabat, "*Oderint, dum metuant.*" Id. ib. 30.

[6] "Queri etiam palam de conditione temporum ſuorum ſolebat, *quod nullis calamitatibus publicis inſignirentur.*" Id. ib. 31.

[7] "Animum quoque remittenti, ludoque et epulis dedito, eadem dictorum factorumque ſævitia aderat. Sæpe in conſpectu prandentis vel commeſſantis ſeriæ queſtiones per tormenta habebantur. Miles decollandi artifex quibuſcunque e cuſtodia capita amputabat." Id. ib. 32.

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born of the muſes from his viſionary commonwealth. He was, likewiſe, very near removing the buſts and writings both of Virgil and Livy from all public libraries; the one, as totally devoid of genius and erudition; the other, as a verboſe and careleſs hiſtorian: and threatened to ſilence the whole profeſſion of the law, that no one might remain to give anſwers in that ſcience, except himſelf [8].

Powers, to which neither the prudent reſerve of Auguſtus, nor the timid cunning of Tiberius, ever dared to aſpire, he boldly aſſumed without fear or moderation [9]. He was even going ſo far as to diſtinguiſh his perſon with the outward badge of the regal character. But his friends having diverted him from this dangerous extravagance, by a prudent ſtroke of flattery, "That he was already much ſuperior to kings and princes," he made amends to his own vanity, by the more profane, though leſs offenſive aſſumption of divine honors [10]. To mortify the ſenate, he obliged many of thoſe who had borne the higheſt offices of the ſtate, to run before his chariot, or to wait at his

[8] "Nec minore livore ac malignitate quam "ſuperbia ſævitiaque pæne adverſus omnis "ævi homines graſſatus eſt. Statuas virorum "illuſtrium, ab Auguſto ex capitolina area "propter anguſtias in Martium Campum "collatas, ita ſubvertit, atque disjecit, ut "reſtitui ſalvis titulis non valuerint. Ve-"tuitque poſthac viventium cuiquam uſquam "ſtatuam, aut imaginem, niſi conſulto ſe "et auctore, poni. Cogitavit etiam de Ho-"meri carminibus abolendis. "*Cur enim* "*ſibi non liceret*, dicens, *quod Platoni licuiſſet*, "*qui eum a civitate, quam conſtituebat, ejece-*"*rat?*" Sed Virgilii et Titi Livii ſcripta et "imagines, paulum abfuit, quin ex omni-"bus bibliotheſis amoveret: quorum alte-"rum, *ut nullius ingenii minimæque doctrinæ*; "alterum, *ut verboſum in hiſtoria negligen-*"*temque carpebat*. De juris quoque con-"ſultis, quaſi ſcientiæ eorum omnem uſum "aboliturus ſæpe jactavit, *ſe, mehercule,* "*effecturum, ne quid reſpondere poſſint, præter* "*eum.*" Suet. in Cal. 34.

[9] Τῳ δ' αυτῳ τουτῳ τροπῳ και ες τ' αλλα παντα ὡς ειπειν ιχρητο. δημοκρατικωτατος γαρ ειναι τα πρωτα δοξας (ὡστε μητε τῳ δημῳ η τῃ γε βουλῃ γραψαι τι, μηδε των ονοματων των αρχικων προσδισθαι τι), μοναρχικωτατος ειγινετο· ὡστε παντα ὁσα ὁ Αυγουστος ες τοσουτῳ της αρχης χρονῳ μολις και καθ' ἑν ἑκαστον ψηφισθεντα οἱ ειδεξατο (ὡν ενια ὁ Τιβεριος ουδ' ὁλως προσηκατο) ες μιαν ἡμεραν λαβειν. Dio Caſſ. 59. 3.

[10] "Nec multum abfuit, quin ſtatim dia-"dema ſumeret, ſpeciemque principatus in "regni formam converteret. Verum ad-"monitus, et principatum et regum ſe "exceſſiſſe faſtigium, divinam ex eo ma-"jeſtatem aſſerere ſibi cœpit." Suet. in Cal. 22.

feet

feet like menial ſlaves: and the conſuls having once neglected to announce his birth-day, he aboliſhed their magiſtracy, and left Rome for three days without any government at all [11]. Finally, to ſhew his extreme contempt for all civil authority, he promiſed to beſtow the conſular dignity upon his favorite horſe [12]: and by a ridiculous ſtrain of impiety, ſhocking even to the groſſneſs of polytheiſm, placed himſelf in the room of Jupiter, became his own prieſt, and made the ſame animal his aſſociate in that venerable office [13]. Upon the whole, infamous as the vices of Tiberius may in fact appear, they were as trifling, in compariſon with the vices of Caligula, as the virtues of Tiberius with thoſe of Auguſtus [14].

Though the ſtroke which put an end to the life of Caligula did no more than an act of juſtice to his oppreſſed country, it was far from an adequate remedy for the public evils. For want of ſome eſtabliſhed rule of ſucceſſion, the conſtitution was almoſt diſſolved. The conſuls, therefore, reſuming their antient authority, convoked the ſenate, in which it ſoon became a queſtion, whether the republic ſhould be reſtored, or a new prince elected [15]. The high importance

Claudius, A. D. 41.

[11] "Nihilo reverentior leniorve erga ſe-
"natum, quoſdam ſummis honoribus func-
"tos, ad eſſedum ſibi occurrere togatos per
"aliquot paſſuum millia, et cænanti, modo
"ad pluteum, modo ad pedes ſtare ſuc-
"cinctos linteo, paſſus eſt: — Coſſ. oblitis de
"natali ſuo edicere, abrogavit magiſtratum,
"fuitque per triduum ſine ſumma poteſtate
"reſpublica." Suet. in Cal. 26.

[12] Εκα των ἱππων, ὃν Ιγκιτάτον ωνομαζε, και επι δειπνον εκαλει,—και προσοπισχνειτο και ὑπατον αὐτον αποδειξειν. και παλιν αν και τουτο επετοιησει, ει πλειω χρονον εζησει. Dio Caſſ. 59. 14.

[13] "Quidam eum *Latialem Jovem* conſalu-
"taverunt. Templum etiam numini ſuo pro-
"prium, et ſacerdotes et excogitatiſſimas hoſ-
"tias inſtituit." Suet. in Cal. 22. Διαδικον τε αὐτον ονομασας—ἱερειας προσεθηκε—και αὐτος ἑαυτῳ ἱερατον, και τον ἱππον συνιερια αποφαινε. Dio Caſſ. 59. 28.

[14] Τοιουτῳ μεν τοτε αυτοκρατορι οἱ Ρωμαιοι παρεδοθησαν· ὡστε τα Τιβεριου ἐργα, παντες χαλεπωτατα δοξαντα γεγονεναι, τοσουτον παρα τα τε Γαϊου, ὁσον τα τε Αυγουστου παρ' ἐκεινα, παρειγκειν. Dio Caſſ. 59. 5.

[15] "Conſules cum ſenatu et cohortibus
"urbanis forum capitoliumque occupârunt,
"aſſerturi communem libertatem." Suet. in Claud. 10.

Του Γαϊου απαλλαξοντος, φυλακας ἐκαταχοσι της πολεως οἱ ὑπατοι διαπεμψαντες, την τε βουλην ες το Καπιτωλιον ηθροισαν, και πολλαι και ποικιλαι γνωμαι ελεχθησαν. τοις μεν γαρ δημοκρατεισθαι, τοις δε μοναρχεισθαι ἐδοκει· και ὁ μεν τον, ὁι δε τον ἡρουντο. και δια τουτο την ἡμεραν την λοιπην και την νυκτα πασαν κατετριψαν μηδεν τελειωσαντες. Dio Caſſ. 60. pr.

of

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of ſuch a debate involved the whole aſſembly in the moſt irreconcilable diſſenſions; and in the midſt of the confuſion, the ſoldiers, roaming about the city in ſearch of plunder, diſcovered Claudius, who had concealed himſelf for fear, and ſaluted him Emperor. In this act of uſurpation they were immediately ſupported by the general cry of the populace, who were more deſirous of a ſingle governor; and the ſenate, after ſome faint ſtruggles, concurred in the nomination, and decreed to him the uſual honors[16].

This was the firſt attempt made by the ſoldiery to impoſe a ſovereign upon the Roman empire; but it was an example too flattering to their natural ambition, for them to loſe ſight of in future. From henceforward, therefore, the ſeeds of a more military and arbitrary form of government began to take root; which, in proceſs of time, gained ſuch an irreſiſtible aſcendency over every other part of the conſtitution, that the ſenate became no better than the ſervile miniſters of the will and pleaſure of the army; though, for the preſent, it did not appear to produce any very viſible alteration.

Claudius, with many vices and imperfections, was not utterly deſtitute of virtues[17]. His education, chiefly under the direction of women, had been narrow and defective, which made him indolent, timid, and irreſolute: having nothing either liberal or ſpirited in his compoſition, he was a ſlave to thoſe about him[18]: but this indolence

[16] "Senatu ſegniore exſequendis conatibus, per tædium ac diſſentionem diverſa "cenſentium, et multitudine quæ circumſtabat, unum rectorem jam nominatim "poſcente, armatos pro concione jurare in "nomen ſuum paſſus eſt." Suet. in Claud. 10.

Οι δε υπατοι τεως αλλως μεν και δημαρχους πεμποντες, απηγορευον αυτῳ, μηδεν τοιουτον ποιειν, αλλ' επι τε τῳ δημῳ και τῃ βουλῃ, και τοις νομοις γενεσθαι· επει δε αυτους οι συνοντες σφισι στρατιωται εγκατελιπον, τοτε δη και αυτοι ὡμολογησαν, και τα λοιπα ὁσα ες την αυταρχιαν ηκοντα ην, αυτῳ εψηφισαντο. Dio Caſſ. 60. 1. And again, τα μεν ψηφισθεντα οι ευθυς παντα, πλην της τε πατρος επωνυμιας, ειδξατο. Id. ib. 3.

[17] Ουτος την μεν ψυχην ου φαυλος εγενετο. Dio Caſſ. 60. 2.

[18] Υπο των εξελευθερων και υπο των γυναικων ἁις συνην, εκακουτο.—πολυν μεν χρονον τῃ τηθῃ Λιουϊᾳ, πολυν

lence of his nature had one good conſequence, to moderate his ambition, and to hinder him from becoming a tyrant [19]. The utmoſt extent of his views was to preſerve the government in the ſame ſtate in which he found it, and to prevent innovations; wherefore he readily forgave all thoſe who had been active in their endeavours to revive the old republic [20]. At times, however, when he was more maſter of himſelf, he would perform ſome actions worthy of applauſe [21]. He ſhewed great reſpect to the ſenate, and ſometimes in conjunction with them, or with the conſuls and prætors, and ſometimes by himſelf, attended the courts, and ſaw that juſtice was faithfully adminiſtered [22]. When the conſuls deſcended from their ſeats to addreſs themſelves to him, he paid them the compliment to riſe and meet them [23]: and if any ſenators happened to ſtand up for a longer time than uſual, he himſelf would do the ſame,

πολυν τε και τη μητρι Αντωνια, τοις τε απελευθερος συνδιατηθεις, και προσετι και εν συνουσιαις γυναικων πλειοσι γνωμενος, ουδεν ελευθεροπρεπες εσεκτητο, αλλα καιπερ και των Ρωμαιων απαντων και των υπηκοων αυτων κρατων, εδεδουλωτο. Dio Caſſ. 60. 2.

[19] "In ſemet augendo parcus atque civilis, prænomine *Imperatoris* abſtinuit, "nimios honores recuſavit." Suet. in Claud. 12.

[20] "Imperio ſtabilito, nihil antiquius "duxit, quam id biduum, quo de mutando "reip. ſtatu hæſitatum erat, memoriæ exi- "mere. Omnium itaque factorum dicto- "rumque in eo veniam et oblivionem in "perpetuum ſanxit ac præſtitit." Id. ib. 11. Τοις αλλοις, οι την δημοκρατιαν εκφανως εσπουδασαν, η και επιδοξοι ληψεσθαι το κρατος εγενοντο, ουχ' οσον ουκ εμνησικακησεν, αλλα και τιμας και αρχας εδωκεν. Dio Caſſ. 6. 3.

[21] Ουκ ολιγα και των δεοντων επραξεν, οποτε εξω τι των προειρημενων παθων εγενετο, και εαυτω εκρατει. Id. ib. 60. 3.

[22] Καθ' εκαστην—ημεραν, ητοιγε μετα πασης της γερουσιας, η και ιδια, το μεν πλειστον εν τη αγορα, ηδη δε και αλλοθι, επι βηματος εδικαζε. και γαρ το κατα τους συνεδρους εκλειφθεν, εξ ου ο Τιβεριος ες την νησον εξεχωρησεν, ανεπωσατο. πολλακις δε και τοις υπατοις, τοις τε στρατηγοις, και μαλιστα τοις την διοικησιν εχουσι, συνεξηταζετο, και ολιγα παντελως τοις αλλοις δικαστηριοις επετρεπε. Dio Caſſ. 60. 4.

"Cognitionibus magiſtratuum, ut unus "e conſiliariis frequenter interfuit." Suet. in Claud. 12.

"De majore negotio acturus, in curia "medius inter conſulum ſellas tribunitio "ſubſellio ſedebat." Suet. ib. 23.

Εκρινοντο δε εν τω συνεδριω, τω τε Κλαυδιω, των επαρχων τε, και των εξελευθερων αυτω παροντων. την μεν γαρ ισηγησιν εν μεσω των υπατων, επι διφρου αρχικου η και επι βαθρου καθημενος, εποιειτο· μετα δε τουτο αυτος τε επι την συνηθη εδραν μετηρχετο, και εκεινοις οι διφροι ετιθεντο. και ταυτα μεν και επι των αλλων μεγιστων ομοιως εγιγνετο. Dio Caſſ. 60. 16.

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though a diſorder by which he was afflicted might very well have excuſed that ceremony[24]. It is plain, indeed, from the general tenor of his conduct, that he looked up to the ſenate, as the ſovereign power of the whole ſtate; and of this he gave one convincing proof, in obtaining a decree, to ratify a permiſſion, already granted by himſelf, to certain perſons of diſtinction to travel out of Italy; that he might not appear to diſpenſe with the laws by his own perſonal authority[25]. Many attempts were likewiſe made by him to improve the conſtitution, by reviving or reforming ſeveral antiquated laws, or by enacting new ones[26]; and though the authors, who relate theſe inſtances of legiſlation, take no notice of his having acted therein by the advice of the ſenate; yet, from the account before given, there is no reaſon to ſuppoſe that he ever took any ſtep of conſequence without it.

Upon the whole, therefore, the Imperial power gained but very little ground during the reign of Claudius: for though the infirmities both of his body and mind made him fickle and uncertain in his motions[27], yet, in general, the affairs of government went on quietly and regularly: the people had few acts of violence or oppreſſion to complain of, that could be charged to his particular account: and when it is remembered by whom he was ſucceeded, his death may juſtly be called a ſevere misfortune to the whole empire.

[23] Ταυτα τε ουν επιεικως επραττε, και των υπατων ει τω συνεδριω καταβαντων ποτε απο των διφρων, ινα διαλεχθωσιν αυτων προσεξανεστη τε και αντιπροσηλθε σφισιν. Dio Caſſ. 60. 6.

[24] Εν τω συνεδριω αυτος μεν εξανιστατο, ει ποτε επι πολυ οι αλλοι εστησαν. καθημενος γαρ υπο της αρρωστιας, πολλακις ανεγιωσκε τινα αιλουμενος. Id. 12.

[25] Τοις αιτουμενοις, ωστε εξω της Ιταλιας αποδημησαι, εφιει μεν και καθ' ἑαυτον ανευ της βουλης· το γε μην και νομω τινι αυτο δοκειν ποιειν, δογμα γενεσθαι εκελευε. Id. 60. 25.

[26] "Quædam circa ceremonias, civilemque et militarem morem, item circa omnium ordinum ſtatum, domi foriſque, aut correxit, aut exoleta revocavit, aut etiam nova inſtituit." Suet. in Claud. 22. Ενομοθετησε μεν ουν και αλλα τινα, ὡν ουδεμια μοι αλλη αναγκη μνημονευσαι εστι. Dio Caſſ. 60. 11.

[27] "In cognoſcendo autem ac decernendo mira varietate animi fuit, modo circumſpectus et ſagax, modo inconſultus ac præceps: nonnunquam frivolus amentique ſimilis." Suet. in Claud. 15.

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Nero, A. D. 54.

Nero's firſt ſtep to the Imperial throne was from the ſhoulders of the army. Being by them ſaluted Emperor, he was preſented to the ſenate, who approved the choice; not forgetting the uſual ceremonies and titles. All theſe he readily aſſumed, except that of "Pater Patriæ," which he modeſtly declined, on account of his youth, being as yet no more than ſeventeen years of age[28]. The commencement of his reign flattered the people with the moſt auſpicious hopes, that he would regulate his conduct by the example of Auguſtus, and neglect no opportunity of exerting the ſame liberality and clemency. In proof of the ſincerity of his intentions, he leſſened the burden of the public taxes[29], and would even have aboliſhed them entirely, had not the ſenators remonſtrated againſt ſuch injudicious generoſity; as by ſo doing, he would deſtroy thoſe very funds by which the ſtate was ſupported and protected[30]. So tender was he of taking away life, that when obliged, according to form, to ſign a warrant for the execution of a criminal, he wiſhed himſelf ignorant of letters[31]. But after all theſe fair profeſſions, he choſe Caligula for his chief pattern; whom he no ſooner began to imitate, than he

[28] "Septendecem natus annos—proceſſit "ad excubitores—proque palatii gradibus "Imperator conſalutatus, lectica in caſtra, "et inde raptim appellatis militibus in "curiam delatus eſt:—ex immenſis, quibus "cumulabatur, honoribus, tantùm Patris "Patriæ nomine recuſato propter ætatem." Suet. in Ner. 8.

"Illatus caſtris Nero, et congruentia "tempori præfatus, promiſſo donativo, ad "exemplum paternæ largitionis, Imperator "conſalutatur. Sententiam militum ſecuta "Patrum conſulta." Tac. Ann. 12. 69.

[29] "Ut certiorem adhuc indolem oſten-"deret, ex Auguſti præſcripto imperaturum "ſe profeſſus, neque liberalitatis, neque "clementiæ, nec comitatis quidem exhiben-"dæ ullam occaſionem omiſit. Graviora "vectigalia aut abolevit, aut minuit." Suet. in Ner. 10.

[30] "Eodem anno crebris populi flagita-"tionibus immodeſtiam publicanorum ar-"guentis, dubitavit Nero, an cuncta vecti-"galia omitti juberet; idque pulcherrimum "donum generi mortalium daret. Sed im-"petum ejus, multum prius laudata mag-"nitudine animi, attinuere ſenatores, diſſo-"lutionem imperii docendo, ſi fructus, "quibus reſp. ſuſtineretur, deminuerentur." Tac. Ann. 13. 50.

[31] "Cum de ſupplicio cujuſdam capite "damnati, ut ex more ſubſcriberet, admo-"neretur, *quam vellem*, inquit, *neſcire* "*literas*." Suet. in Ner. 10.

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inſtantly excelled; conſidering himſelf as much bound to outdo all mankind in wickedneſs, as he was their ſuperior in ſtation [32].

Finding the ſenate a reſtraint upon his arbitrary deſigns, he threatened to annihilate the order [33], and therewith to have deſtroyed the tottering ruins of this once glorious empire. But, to draw a veil before ſuch a diſguſting ſcene of horror, as would ariſe from a nearer view of the life of this monſter of barbarity, ſuffice it to ſay, that being grown hateful and intolerable, by an unremitting courſe of the moſt brutal enormities, he was forced to abandon the throne, and to ſeek for refuge, in ſuicide, from the juſt vengeance of his incenſed people [34]. His name has ever ſince become a proverb of reproach, to ſtigmatize, with a peculiar brand of ignominy, ſuch outrageous violators of the rights of human nature.

The tyranny of Nero had thrown the whole Roman world into a general convulſion, which not even his death could appeaſe. It likewiſe gave birth to a new evil, and diſcloſed one fatal ſecret, that a prince might be appointed in other places, as well as in Rome [35]. The ſeditious and inſolent humor of the ſoldiery, which had been long rankling in their hearts, began to diſplay itſelf with every violent and malignant ſymptom that could alarm the apprehenſions of a diſtempered conſtitution; reduced to this ſtate of diſtraction and deſpondency, not ſo much by the ambition of thoſe who were appointed its governors, as by the avarice and licentiouſneſs

[32] Τελος απηρυθμασι, και παϊλα τα παραγγιλματα αυλων συγχιας και καλαπαϊησας, προς τον Γαϊον ετεινεν. ὡς δ' ἁπαξ ζηλωσαι αυλον επιθυμησι, και ὑπιριβαλλιο, νομιζων της αυλοκραϊορικης και τουτ' ισχυος ἐργον ειναι, το μηδε εν τοις κακιϛοις μηδενος ὑστιριζειν. Dio Caſſ. 61. 5.

[33] "Multas nec dubias ſignificationes "ſæpe jecit, ne reliquis quidem ſe parſurum "ſenatoribus; eumque ordinem ſublaturum "quandoque e rep." Suet. in Ner. 37.

"Hæc perſuaſio," ſays Pliny to Trajan, "ſuperbiſſimis dominis erat, ut ſibi vide-"rentur principes eſſe deſinere, ſi quid "facerent tanquam ſenatores." Plin. Pan. 63.

[34] Suet. in Ner. 49.

[35] "Evulgato imperii arcano, poſſe prin-"cipem alibi quam Romæ fieri." Tac. Hiſt. 1. 4.

of

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of the army; who now introduced the pernicious practice of driving out one emperor by ſetting up another[36]; inſomuch, that during the ſpace of one year, no leſs than four ſtood forth in different provinces, in ſo rapid a courſe of ſucceſſion, that they appeared like ſo many fictitious monarchs, acting their parts in the ſhort and tranſitory ſcenes of a drama[37].

It ſeems to have been the general determination of the army, in more quarters of the empire than one, to declare againſt Nero, and to nominate other ſucceſſors. Virginius, the general of ſome powerful legions in Gaul, was one of the firſt who was tempted with the inſidious bait; but he ſtrenuouſly aſſerted the right of the ſenate, and poſitively refuſed either to accept it himſelf, or to ſuffer it to be conferred on any other, without the conſent of that body[38]. Galba was at the head of the army in Spain; and, though far advanced in years, had yet ſeveral military qualities to recommend him to the notice of his fellow-ſoldiers, who unanimouſly proclaimed him emperor[39]; and as ſuch he was acknowledged by the ſenate and people, and inveſted with the accuſtomed honors and prerogatives[40]. Galba, A. D. 68.

This is the firſt inſtance of the Imperial dignity being removed from the Cæſarean family[41], to which it had hitherto been confined; not, indeed, by any act of the legiſlature, but by in-

[36] Ουχ ἧττον ὑπο φιλαρχιας των αναγορευομενων αὐτοκραϊορων, ὡς φιλοπλυτιας και ακολασιας τυ γραϊιωτικυ, δι' αλληλων, ὡσπερ ἠλυς, τυς ἡγεμονας εκρυοντος. Plut. in Gal. p. 369.

[37] Or, in the words of our great poet;

"Who ſtrut and fret their hour upon the
"ſtage,
"And then are heard no more."

Ἡ των Καισαρων ἐφοδια το παλαιον εν ολιγοις χρονῳ τισσαρας αὐτοκραϊορας ὑπεδεξαϊο, τυς μεν εισαγοντων ὡσπερ δια σκηνης, τυς δ' εξαγοντων. Plut. in Gal. 369.

[38] Ουιργινιος δε ταγμαϊων επιφανων δυνατωτατος, πολλακις αὐτον αναγορευοντων αυτοκραϊορα και βιαζομενων, υτε αὐτος εφη λημψεσθαι την ἡγεμονιαν, υτε αλλῳ περιοψεσθαι διδομενην, ὁν αν μη ἡ συγκλητος ἑληται. Plut. in Gal. p. 373.

[39] Ὁ Βινδιξ τον Γαλβαν—επιτηδεια τι και εμπειρια πολεμων διαφεροντα, και της Ἰβηριας αρχοντα, δυναμιν τε ου μικραν εχοντα, εις την ἡγεμονιαν προεχειρισαϊο· κἀκεινος ὑπο των ϛραϊιωτων αυτοκρατως ανηγορευθη. Dio Caſſ. 63. 23.

[40] Τῳ Γαλβᾳ τα τῃ αὐτοκρατορι αρχῃ προσηκοντα εψηφισαϊο. Ib. 63. 29.

[41] Ὁ Γαλβας—πρωτος μεϊα το Αυγουϛυ γενος εκ των αλλων Ῥωμαιων εμοναρχησε. Ib. 56. 29.

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trigue or accident. From henceforth all ideas of hereditary ſucceſſion ſeem to have been entirely exploded: for though, in after-ages, children not unfrequently ſucceeded their fathers, it was not in virtue of any right of blood, but in conſequence of the ſpecial appointment of the reigning prince at his death; and more uſually by aſſociating a ſon, a nephew, or ſome other dependent, with himſelf during his own life. Conſidering the imperfect ſtate of the conſtitution, this practice of ſupplying vacancies by anticipation was extremely wiſe and politic; and contributed to the prevention of many dangerous diſputes: but in all theſe caſes the ſenate, or army, as it happened, claimed the privilege of confirming the nomination.

Galba, on his promotion, behaved with great humility and condeſcenſion; affecting no higher title than that of Lieutenant of the Roman Senate and People[42]. He exhorted Virginius to unite with himſelf in reſtoring and maintaining the public liberty[43]; and modeſtly conſidered the empire, not as a prize of his own acquiring, but as a boon conferred upon him by his fellow-ſubjects[44]; or rather as a dangerous eminence, which his fears forced him to occupy, more than his ambition prompted him to covet[45]. Upon the whole, he might have been eſteemed highly worthy of his dignity, had not his

42 "Conſalutatus Imperator, *Legatum ſe* "*ſenatus ac populi Romani* profeſſus eſt." "—Ac e primoribus prudentia atque ætate "præſtantibus, velut inſtar ſenatus, ad quos "de majore re, quoties opus eſſet, referretur, "inſtituit." Suet. in Gal. 10.

Ὁ δὲ ταυτην μεν ευθυς ω προσεδεξατο την προσηγοριαν (ſc. αυτοκρατορος)—ὡμολογησε επιδωσειν τη πατριδι την ἑαυτω προνοιαν, ὁτι Καισαρ, ὁτι αυτοκρατωρ, σρατηγος δε συγκλητω και δημω Ρωμαιων ονομαζομενος. Plut. in Gal. p. 372.

43 Εγραψε τω Ουιργινιω, παρακαλων κοινοπραγειν και διαφυλασσειν ἁμα την ἡγεμονιαν και την ελευθεριαν Ρωμαιοις. Id. 373.

44 Αὐλος δε τα μεν αλλα μετριως ἠρχε, και ανεπαχθης ην, νομιζων ουκ ειληφεναι την αρχην, αλλα δεδοσθαι αὐτῳ. Dio Caſſ. 64. 2.

45 "Supervenerunt vindicis literæ hortantis (Galbam) ut humano generi aſſertorem ducemque ſe accommodaret. Nec "diu cunctatus, conditionem partim metu, "partim ſpe recepit." Suet. in Gal. 9. And in his ſpeech to Piſo, upon his adoption of him, he thus ſpeaks of himſelf; "*Sed* "*neque ipſe imperium ambitione accepi.*" Tac. Hiſt. 1. 15. And a little further; "*Nunc eo* "*neceſſitatis jampridem ventum eſt, ut nec mea* "*ſenectus conferre plus populo Romano poſſit,* "*quam bonum ſucceſſorem; nec tua plus juventa,* "*quam bonum principem.*" Id. ib. 16.

very

very exaltation betrayed his unfitneſs [46]. Though not diſpoſed to violence or injuſtice himſelf, he connived at the commiſſion of them in others; or, what is equally reprehenſible in a prince, lived in profound ignorance of what was doing under his authority, by his miniſters and favorites; the chief of whom, Titus Vinnius, by his daily miſconduct, brought a ſcandal upon the adminiſtration, and defeated all the good deſigns of his better-inclined maſter [47]. Galba's own avaricious diſpoſition, likewiſe, and ſeverity of temper, put him upon various plans of reformation, very ill ſuited to the licentious turn of the age; gave a general diſguſt to the army; and provoked them to diſpatch him, with as little ceremony as they firſt advanced him.

This bloody cataſtrophe, though beheld with a frantic joy by a fickle populace, only multiplied their diſtractions, and aggravated their miſeries. It inſpired the other competitors with freſh hopes, and nearer views; and expoſed the public to the inſults of two of the moſt abandoned and profligate wretches in the world [48]. The ſenate, too weak to reſiſt the overbearing clamors of a riotous army, was obliged to temporiſe; and to compliment them with the ſame honorable marks of diſtinction, which cuſtom had now made neceſſary on every new acceſſion [49].

46 "Omnium conſenſu capax imperii, "niſi imperâſſet." Tac. Hiſt. 1. 49.

47 Ὁ δὲ πρεσβυτης ἠδικεῖτο, τὰ μὲν πρῶτα τῶ Οθωνι κακῶς διοικουμένος, ἃ δὲ αὖθις ὀρθῶς προηρεῖτο διαβαλλόμενος, ἢ κωλυόμενος. Plut. in Gal. p. 384. Ὥστ' εἰ καὶ ἐξῶν τοῦτ' ἦν δεινὸν ποιεῖν ὁ Γαλβας ἦν, ἀλλ' ὅτι ἐκεινους ἀδικεῖν ἀπετρεπεν, ἢ ὅτι ἠγνοει τὰ γινομενα, οὐ καλῶς ἠκουε. Dio Caſſ. 64. 2.

48 "Tum duos omnium mortalium im- "pudicitia, ignavia, luxuria deterrimos, "velut ad perdendum imperium fataliter "electos, non ſenatus modo et eques, quis "aliqua pars et cura reip. ſed vulgus "quoque palam mœrere." Tac. Hiſt. 1. 49. Under Otho, ſays the ſame hiſtorian, "Omnia arbitrio militum acta. Ib. 1. 46.

47 "Exacto per ſcelera die, noviſſimum "malorum fuit lætitia. Vocat ſenatum "Prætor Urbanus. Certant adulationibus "cæteri magiſtratus. Accurrunt patres, de- "cernitur Othoni tribunitia poteſtas et no- "men Auguſti, at omnes principum ho- "nores." Ib. 1. 47. Ἡ μεντοι βουλη παντα τα προς την αρχην φερουσα ἐψηφισατο. Dio Caſſ. 64. 8. "In ſenatu, cuncta longis aliorum "principatibus compoſita, ſtatim decernun- "tur." (ſc. Vitellio) Tac. Hiſt. 2. 55.

Otho,

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Otho, A. D. 69.

Otho had not the ſpirit boldly to avow his uſurpation; but he pretended to have been forced into the throne by the army, whoſe importunities he could not reſiſt, without extreme hazard of his life. He began with much apparent moderation, and many fair promiſes; though it was eaſy to foreſee, that his reign would be more cruel than that of Nero, whoſe name was given to him by the ſervile multitude [50]. This reproachful addition, which muſt have raiſed horror in every mind, not totally loſt to all feelings of human kindneſs, he received with many ſignal marks of approbation; by uſing it in his letters; by replacing the ſtatues of that execrable tyrant; and by recalling and careſſing thoſe who had been moſt in his favor. But what rendered Otho ſtill more univerſally deteſtable was, that he had made the empire a mere venal office; and the city a prey to the outrages and rapine of the vileſt of mankind: treating the ſenate and people with the higheſt degree of contempt; and flattering the ſoldiers into a notion, that they had a right of creating and murdering the emperor at their own pleaſure [51].

Having no claim to the affections of the Romans, the firſt appearance of his competitor, at the head of a formidable army, admoniſhed him that his power was haſtening to a concluſion. But,

[50] Βεβιασθαι μεν, και ες το τειχος ακων εσηχθαι, καϊπλανθα αὐτιλεγων, κεκινδυνευκεναι ελεγε. και τα τε αλλα επιεικως εφθεγγιλο, και τη ὑποκρισει του σχηματος εμιβριαζε· φιλημαΐα τε ὡς ἑκασοις δια των δακτυλων επεμπε, και ὑπισχνειλο πολλα. ουκ ελαν-θανε δε, ὡς και ασελγεσερον και πικροτερον τω Νερωνος αρξειν εμελλε. το γ' ουν ονομα αὐτου αὐτῳ ενθυς επεθετο. Dio Caſſ. 64. 8. "Ingreſſus ſenatum, poſitaque brevi ratione, quaſi raptus de publico, et ſuſcipere imperium vi coactus, geſturuſque communi omnium arbitrio, palatium petit. Ac ſuper cæteras gratulantium adulantiumque blanditias, ac infima plebe appellatus NERO, nullum indicium recuſantis dedit: imo, ut quidam tradiderunt, etiam diplomatibus primiſque epiſtolis ſuis ad quoſdam provinciarum principes, Neronis cognomen adjecit. Certe et imagines ſtatuaſque ejus reponi paſſus eſt, et procuratores atque libertos ad eadem officia revocavit." Suet. in Oth. 7. "Creditus eſt etiam de celebranda Neronis memoria agitaviſſe, ſpe vulgum alliciendi." Tac. Hiſt. 1. 78.

[51] Μαλιστα δε αὐτου εμισουν, ὁτι την τε αρχην ὠνιον τε αποδειξειχει, και την πολιν επι τοις θρασυταλοις επεποιηκει· και την μεν βουλην και τον δημον παρ' ουδεν ηγε, τους δε στρατιωτας επεπεικει και τουδ', ὁτι αποκλειναι Καισαρα και ποιησαι δυναιλαι. Dio Caſſ. 64. 9.

ſtrange

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ſtrange as it may appear, he took no other ſtep to avoid the danger, than by declining to meet his antagoniſt in the field of battle. Making a virtue of neceſſity, he affected to be unable to bear the ſight of his fellow-citizens ſtreaming with each others blood; he would therefore now give them the moſt indubitable proof of his love of his country; and convince them of the propriety of having made choice of him for their ruler; by devoting himſelf a willing victim to the public welfare and tranquillity [52]. Thus reſolved, he put an end to the competition for empire, by a calm and determined act of ſelf-violence, which the falſe philoſophy of a pagan age has magnified into heroiſm; and tranſmitted to poſterity as the only meritorious circumſtance of his whole life [53].

Every vice that could moſt degrade human nature, and aſſimilate a rational being to a mere brute, was centered in Vitellius [54]. But the ſpirit of the Roman people was now ſunk to ſo low a ſtate of degeneracy, that their applauſe or cenſure, their love or hatred, were entirely governed by the good or ill fortune of their reſpective objects [55]. No ſooner was he in full poſſeſſion of power, but, as if

Vitellius, A. D. 69.

[52] Ὁ δὲ Οθων ανεχωρησεν εκ της μαχης, λεγων μη δυνασθαι μαχην ανδρων ὁμοφυλων ιδειν. Dio Caſſ. 64. 10. And again, in his own words, Μισω πολεμον εμφυλιον, καν κρατω· φιλω παντας Ῥωμαιους, καν μη ὁμολογωσι μοι. νικατω Βιτελλιος, επει τουτο τοις θεοις εδοξε.—πολυ γαρ που και κρειττον και δικαιοτερον εστιν, ενα ὑπερ παντων, η πολλους ὑπερ ενος απολεσθαι.—εγω δ' αυτος εμαυτον ελευθερωσω, ὁπως και τῳ εργῳ απαντες ανθρωποι μαθωσιν, ὁτι τοιουτον αυτοκρατορα εἱλεσθε, ὁστις ουχ ὑμας ὑπερ εαυτου, αλλ' εαυτον ὑπερ ὑμων ἑδωκε. Id. ib. 13.

[53] Τουτο το τελος του Οθωνος εγενετο.—κακιστα γε μην ανθρωπων ζησας, καλλιστα απεθανε· και κακουργοταται την αρχην ἁρπασας, αριστα αυτης απηλλαγη. Dio Caſſ. 64. 15. "Magna pars hominum, "incolumem graviſſime deteſtata, mortuum laudibus tulit." Suet. in Oth. 12.

[54] Αυτος δε τῃ τε τρυφῃ και τῃ ασελγειᾳ προσκειμενος, ουδεν ετι των αλλων ουτε των ανθρωπινων ουτε των θειων εφροντιζεν. ην μεν γαρ και απ' αρχης τοιουτος. Dio Caſſ. 65. 2. "Sequenti ætate omnibus "probris contaminatus." Suet. in Vit. 4.

[55] Οἱ δ' εν τῃ Ῥωμῃ, ὡς ηκουσαν το του Οθωνος παθος, παραχρημα, ὡσπερ εικος ην, μεταβαλλονται. τον τε γαρ Οθωνα, ὁν πρωτερον επῃνουν και υπ' ευχαις, ελοιδορουν ὡς πολεμιον, και τον Βιτελλιον, ὁν καθηρουν, και επῃνουν και αυτοκρατορα ανηγορευον. ουτω που ουδεν παγιον εστι των ανθρωπινων· αλλ' ὁμοιως ὁι τε ες τα μαλιστα ανθρωπιζοντες, και ὁι εν τῳ ταπεινοτατῳ οντες, ασταθμητα τε αἱρουνται, και προς τας τυχας σφων, και τους επαινους και τους ψογους, τας τε τιμας και τας ατιμιας λαμβανουσι. Dio Caſſ. 65. 1.

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he had at once changed his nature, he was received with the loudeſt acclamations, and dignified with titles and honors, which ſeemed only to render his demerits more conſpicuous. His reign was fortunate in nothing but in the ſhortneſs of its duration, being a continued ſcene of profligacy, cruelty, and deſpotiſm; and his death was not more ignominious than his crimes deſerved [56].

It is difficult to conceive how a ſtate, ſinking under the oppreſſions of ſuch an uninterrupted ſucceſſion of tyrants, could have preſerved any thing like an union of her numerous and diſtant members; or indeed have exiſted under any form whatever. But a firm and vigorous habit, acquired in her earlier years, though much impaired by her own irregularity and intemperance, was not yet ſo far exhauſted, as to leave her without hopes of a final recovery. She has, therefore, been very ſignificantly compared to the fabulous heavens aſſaulted by the Titans; frequently diſcomfited, and in imminent danger of being overwhelmed by theſe audacious invaders; but ſtill endued with a ſufficient portion of native proweſs to repel theſe rude attacks, and to regain her primitive force and ſtability [57].

The fortune of Rome, as already obſerved, had been laying the foundations, and preparing the way to empire, in divers regions of the world at the ſame inſtant; which was attended with various, and very oppoſite, conſequences, as well to the public, as to the princes themſelves; according to the different circumſtances wherewith theſe events were accompanied. [58]. The legions, every where ſupreme in

[56] Suet. in Vitel. 17. Tac. Hiſt. 3. 85 Dio Caſſ. 65. 20 & 21.

[57] Τὴν Ῥωμαίων ἡγεμονίαν ὁμοίαν τοῖς λεγομένοις Τιτανικοῖς παθεσι καὶ κινήμασι κατειλαμβάνειν, εἰς πολλὰ διασπωμένην ἅμα καὶ πολλαχόθεν αὐθις ἑαυτὴν συμπιπλᾶσαν. Plut. in Galb. 369.

[58] "Statuebat jam fortuna, in diverſa "parte terrarum, initia cauſaſque imperio: "quod varie ortum, lætum reipublicæ aut "atrox, ipſis principibus proſperum, aut "exitio fuit." Tac. Hiſt. 2. 1.

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their own ideas, began now to claim a right of diſpoſing of this valuable prize, without conſulting the inclination of their fellows in the other provinces [59]. In virtue of this aſſumed authority, part of the army, then in Judea, having conſpired together to elect an emperor of their own, fixed their choice upon Veſpaſian, the general [60]; whoſe approved valour, benevolent temper, and upright character, had engaged their affections; though far from being ambitious of the office, and extremely unwilling to involve himſelf in the troubles in which the ſtate was then embroiled [61].

Veſpaſian, A. D. 69.

This venerable prince accepted his new honors with the utmoſt calmneſs and humility; and, without appearing as a novice in the exerciſe of his power [62], by prudence and moderation ſoon reſtored tranquillity to the whole empire [63]. Upon the death of Vitellius, the ſenate ratified the choice of the army [64]; and, in certain and joyful hope of ſeeing a ſpeedy determination of their miſeries, by a very full and ample decree, confirmed him in the

59 "Cuncta impetu militum acta: non "parata cognitione, non conjunctis legionibus." Tac. Hiſt. 2. 79.

60 "Mæſiaci exercitus bina e tribus legionibus millia,—conſilium inſerunt eligendi creandique Imperatoris.—Propoſitis "itaque nominibus legatorum conſularium, "quot ubique tunc erant, cum cæteros alii "alium alia de cauſa improbarent.—Veſpaſianum laudibus ferrent: aſſenſere "cuncti, nomenque ejus vexillis omnibus "ſine mora inſcripſerunt." Suet. in Veſp. 6.—"Egreſſum cubiculo Veſpaſianum pauci "milites ſolito adſiſtunt ordine, ut legatum "ſalutaturi, imperatorem ſalutaverunt. "Tum cæteri, accurrere, Cæſarem, et "Auguſtum, et omnia principatus vocabula "cumulare." Tac. Hiſt. 2. 80.

61 Ην μεν γαρ ὁ Ουισπασιανος ουδ' αλλως προπετης, και ες ταραχωδη ὁυλω πραγματα και παν ακνει ἑαυτον καθιναι. αλλ' ὁμως των ανθρωπων τινοια πολλη ἑν προς αυτον, (ἡ γαρ εκ της Βριτανιας δοξα, και ἡ εκ του εν χερσι πολεμου ευκλεια, το, τε επιεικες και φρονιμον αυτου, προς επιθυμιαν σφας ηγε της παρ' αυτω προκαλισεως.)——αισθομενοι δε οι στρατιωται τουτων, και περιμενοντες την σκεψιν αυτου, ανευπον αυτον αυτοκρατορα. Dio Caſſ. 65. 8.

62 "In ipſo nihil tumidum, arrogans, aut "in rebus novis novum fuit." Tac. Hiſt. 2. 80.

63 "Rebellione trium principum, et cæde, "incertum diu, et quaſi vagum imperium "ſuſcepit, firmavitque gens Flavia." Suet. in Veſp. 1. The ſame hiſtorian, ſpeaking of him in another place, ſays, "Per totum "imperii tempus nihil habuit antiquius, "quam pope afflictam, nutantemque remp. "ſtabilire primo, deinde et ornare." Ib. 8. "Cæteris in rebus ſtatim ab initio princi-"patus uſque ad exitum civilis et clemens." Ib. 12.

64 Ταυτα μεν ὁυν ως ισχυε· αυτοκρατωρ δ' επ' αυτοις ὁ Ουισπασιανος και προς της βουλης απεδειχθη. Dio Caſſ. 66. 1.

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poſſeſſion of every privilege which had uſually been granted to his predeceſſors [65]. This decree has been generally conſidered as nothing more than a ratification of the famous *Lex Regia* [66], ſuppoſed to have been originally enacted in favour of Auguſtus; the true nature and extent of which, being a point of great moment in the conſtitutional hiſtory of the Roman people, will be the ſubject of our particular inquiry in a future chapter.

In the mean while it ſhould be remembered, that Veſpaſian, to ſhew himſelf worthy of the confidence repoſed in him, labored with the utmoſt aſſiduity to reform thoſe abuſes, which had ariſen from the violence of former reigns. One of his firſt attempts was to reſtore the antient laws, by collecting all the fragments of the old tables, which had eſcaped the late general conflagration [67], and to revive and enforce their authority. He likewiſe rectified the numerous diſorders which, from the confuſions of the times, had crept into the courts of law; abridged the forms of judicial proceedings [68]; and often adminiſtered juſtice in his own perſon [69].

[65] "Senatus cuncta principibus ſolita Veſpaſiano decrevit, lætus et ſpei certus." Tac. Hiſt. 4. 3.

[66] This law was engraved upon copper; and being found, in the laſt century, among the ruins of the capitol, where it was firſt ſet up, is now preſerved in the Lateran palace. The authenticity is not to be doubted; and, as it throws ſo true a light upon the preſent ſubject, it deſerves to be peruſed with the greateſt attention; but, having been tranſcribed and reprinted in ſuch a variety of modern writers, need not here be repeated. V. Grut. Inſcrip. p. 242. Grav. de Imp. Rom. 24. Taylor, de Lege Regia, cum multis aliis. It may be preſumed that this was not the firſt of the kind; but it is moſt likely that all the former ones were deſtroyed, in the general conflagration of the city by Nero.

[67] "Ærearum tabularum tria millia, quæ ſimul conflagraverant, reſtituenda ſuſcepit, undique inveſtigatis exemplaribus, inſtrumentum imperii pulcherrimum ac veruſtiſſimum: quo continebantur pæne ab exordio urbis ſenatuſconſulta, plebiſcita de ſocietate et fœdere ac privilegio cuicunque conceſſis." Suet. in Veſp. 8.

[68] "Litium ſeries ubique majorem in modum excreverant, manentibus antiquis, intercapedine juriſdictionis, accedentibus novis, ex conditione tumultuque temporum. Sorte elegit per quos rapta bello reſtituerentur: quique judicia centumviralia, quibus peragendis vix ſuffectura litigatorum ætas videbatur, extra ordinem dijudicarent, redigerentque ad breviſſimum numerum." Suet. in Veſp. 10.

[69] Εν τη αγορα πολλακις εδικαζεν. Dio Caſſ. 66. 10.

From

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From the earlieſt date of the imperial power, the ſenate had always ſhewn too mean an attachment even to the beſt princes; though ſeveral particular examples of true wiſdom and patriotiſm had exiſted in the perſons of individuals. But virtues like theſe had little hopes of any favorable reception in the vicious courts of Caligula or Nero; conſequently, both the deſire and ability of reſiſtance declined, in proportion as the corruption of the age increaſed. The ſpirit of independence, which had been the antient glory of that auguſt order, was ſucceeded by the moſt abject ſervility; and, inſtead of being a check upon the encroachments of a lawleſs deſpot, they now were become the baſe inſtruments of his tyranny. So great a part, therefore, being unqualified for that important ſtation; and many of the reſt having fallen victims to the fury of civil war; the temperate zeal of Veſpaſian undertook to reſtore that once important body to its original uſe, by purging it of thoſe members, whoſe vices had diſgraced its inſtitution; and by ſupplying their vacancies with the worthieſt that the degeneracy of the times would afford[70]. To give them honor in the ſight of the people, and to ſhew his ſenſe of their conſequence, he ſubmitted all queſtions of moment to their deciſion; either propoſing them in perſon, or, when neceſſarily abſent, by his ſons: and thus he ſtrengthened his own authority, by a firm union with an acknowledged branch of the antient conſtitution[71].

With all theſe virtues, however, he is accuſed of ſome failings, particularly that of avarice[72]; a vice, of all others, the moſt unbecoming,

[70] "Ampliſſimos ordines, et exhauſtos cæde "varia, et contaminatos veteri negligentia, "purgavit: ſupplevitque recenſito ſenatu "et equite: ſummotis indigniſſimis, et ho"neſtiſſimo quoque Italicorum ac provincia"lium allecto." Suet. in Veſp. 9.

[71] Ες το συνεδριον διαπαλος εφοιτα, και περι παν-
των αυτους επεκοινου.—ὅσα τε μὴ ἐδυνατο αὐτος ὑπο
του γηρως διαλεγισθαι, ἢ και ὅσα ἁπαν επεστελλε
τῃ βουλῃ, διὰ των υἱων αὐτου ὡς το πολυ εκελευεν ανα-
γινωσκεσθαι, τιμων καὶ τουτῳ αὐτην. Dio Caſſ. 66. 10.

[72] "Veſpaſianus acer militiæ, anteire ag"men, locum caſtris capere, noctu diuque
"conſilio,

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coming, and incompatible with, the character of a ſovereign prince; and of courſe the moſt likely to render him the object of popular cenſure. But upon a fair and candid examination of the grounds whereon this accuſation is built, it ſeems to have ariſen chiefly from a ſimplicity of manners, a plainneſs of appearance, and a contempt of every expence that centered only in himſelf: and, after all, was, probably, no more than the effect of mere habit; though eaſily converted into a fault by the prejudices of a luxurious and extravagant age; which is very apt to miſtake prudence for covetouſneſs, and profuſion for generoſity. This opinion is fully juſtified by the ſame writers, who have recorded his blemiſhes with great freedom and impartiality; and have, at the ſame time, carried their complaiſance much too far, in palliating even his rapines and extortions, under the pretence of the neceſſities of the ſtate, and of his ſubſequent application of theſe ill-gotten treaſures to many public and beneficial uſes [73]. But they in general acknowledge, that, though he ſpent but little upon himſelf, he was extremely bountiful, both to the public [74], and to all others in diſtreſs: that he ſupported thoſe of conſular rank, who were in a ſtate of indigence, with ample annuities: that he relieved many cities in divers parts of the empire, which had ſuffered by

" conſilio, ac ſi res poſceret, manu hoſtibus " obniti, cibo fortuito, veſte habituque vix " a gregario milite diſcrepans, prorſus, ſi " *avaritia* abeſſet, antiquis ducibus par." Tac. Hiſt. 2. 5. " Sola eſt, in qua meritò " culpetur, pecuniæ cupiditas.—Quidam " natura cupidiſſimum tradunt." Suet. in Veſp. 16.

[73] " Sunt qui opinentur, ad manubias et " rapinas neceſſitate compulſum, ſumma " ærarii fiſcique inopia; de qua teſtificatus " ſit initio ſtatim principatus: profeſſus " *quadringenties millies opus eſſe, ut republica* " *ſtare poſſet.* Quod et veriſimilius videtur, " quando et male partis optime uſus eſt." Suet. in Veſp. 16.

[74] Μεγαλοφρονεστατα δ' αει πολις ες το κοινον οσα ειχην αναλωσας, και τας πανηγυρεις πολυτελεστατα διαθεις, συντελεστατα διηλατο, και ουδεν ἐξω των παν αναγκαιων εδαπανα.—κἀκ τουτου και τα μαλιστα διεδειξεν, ὁτι τας συλλογας των χρηματων ουκ εις τας ἰδιους ἡδονας, αλλ' ες τας του δημου χρειας ἐποιειτο. Dio Caſſ. 66. 10.

fires and earthquakes[75]; and that he cheriſhed genius, and encouraged the liberal arts with the moſt unbounded munificence[76].

Upon the whole, after a fair and unprejudiced review of the political conduct of Veſpaſian, his aim ſeems to have been, to bring back the government to the footing on which it was placed by Auguſtus; that is, to a monarchy originating in the appointment of the ſenate, and, in many inſtances, ſubject to its control: reſerving to himſelf, indeed, the ſupreme executive power, together with the precedence naturally adhering to the imperatorial character: but, in all matters of a private concern, condeſcending to the ſame level with the reſt of his fellow-citizens[77]. It is remarkable, likewiſe, that, when once in firm poſſeſſion of the throne, the ſtorms, with which the whole empire had been ſo long and ſo violently agitated, ſubſided into a ſtate of profound tranquillity, without the leaſt complaints of any acts of oppreſſion on his part, or of ſedition on the part of the people; and that, after a peaceable and happy reign of ſeveral years, he died in an advanced age, in the actual diſcharge of his duty[78]; and tranſmitted his honors to his poſterity: facts, which carry with them a ſignal and convincing argument of the general wiſdom and lenity of his adminiſtration.

[75] "In omne hominum genus liberaliſſimus: explevit cenſum ſenatorium: conſulares inopes quingentis ſeſtertiis annuis ſuſtentavit: plurimas per totum orbem civitates terræ motu aut incendio afflictas, reſtituit in melius." Suet. in Veſp. 17.

[76] "Ingenia et artes vel maxime fovit." Id. ib. 18.

[77] Το, τι συμπαν, τη προνοια των κοινων, αυτοκρατως νομιζεσθαι· ες δι δη τ' αλλα παντα κοινος και ισοδιαιτος σφισιν ην. Dio Caſſ. 66. 11.

[78] The circumſtances of his death are thus recorded by a cotemporary hiſtorian: "Cum "ſuper urgentem valetudinem creberrimo "frigidæ aquæ uſu etiam inteſtina vitiaſſet: "nec eo minus muneribus imperatoris ex "conſuetudine fungeretur, ut etiam lega"tiones audiret cubans, alvo repente uſque "ad defectionem ſoluta, *Imperatorem*, ait, "*ſtantem mori oportere.* Dumque conſur"git, ac nititur, inter manus ſublevantium "extinctus eſt." Suet. in Veſp. 24. Των δι ιατρων επιλιμωνιων αυτω, ὁτι τη τε αλλη διαιτη ὁμοια νοσων ιχρηιο, και παντα τα προσηκοντα τη αρχη ενεργοι, "Τον αυτοκραιορα δει, εφη, ιστωτα αποθνη"σκειν." Dio Caſſ. 66. 17.

Titus

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Titus, A. D. 79.

Titus had been admitted to a ſhare of the government, and had executed many of the peculiar functions of the imperial office, in the life-time of his father[79]. In his early days, however, he had been guilty of various acts of cruelty and violence; and had diſplayed ſo ſtrong a propenſity to rapine and debauchery, that the public voice pronounced him another Nero[80]; and expreſſed the moſt anxious apprehenſions at his acceſſion to the throne. But this event wrought a total change in his nature, and ſet forth the latent virtues of his heart in their true colors; inſomuch that, inſtead of the object of univerſal dread and deteſtation, he became, in one inſtant, the *delight of mankind*[81]. As a ſpecimen of the ſincerity of his reformation, he impoſed upon himſelf the rigid taſk of parting from the deareſt object of his affections, whom he immediately diſmiſſed

[79] "Neque ex eo deſtitit participem, atque "etiam tutorem imperii agere. Triumpha- "vit cum patre, cenſuramque geſſit una. "Eidem collega et in tribunitia poteſtate, et "in ſeptem conſulatibus fuit. Receptaque "ad ſe prope omnium officiorum cura, cum "patris nomine et epiſtolas ipſe dictaret, et "edicta conſcriberet." Suet. in Tit. 6.

[80] "Quando privatus, atque etiam ſub "patre principe, ne odio quidem, nedum "vituperatione publica caruit." Suet. in Tit. 1. "Egit aliquanto incivilius et vio- "lentius: ſiquidem ſuſpectiſſimum quemque "filii, ſubmiſſis qui per theatra et caſtra, "quaſi conſenſu ad pœnam depoſcerent, "haud cunctanter oppreſſit. In his A. Cæ- "cinam conſularem virum, vocavit ad cœ- "nam, ac vix dum triclinio egreſſum, con- "fodi juſſit." Id. ib. 6. "Præter ſævi- "tiam, ſuſpecta in eo etiam luxuria erat, "quod ad mediam noctem commiſſationes "cum profuſiſſimo quoque familiarium ex- "tenderet. Nec minus libido, propter "exoletorum et ſpadonum greges, prop- "terque inſignem reginæ Berenices amorem, "cui etiam nuptias pollicitus ferebatur. Suſ- "pecta et rapacitas, quod conſtabat in cog- "nitionibus patris nundinari præmiarique "ſolitum. Denique propalam alium Ne- "ronem et opinabantur et prædicabant." Id. ib. 7.

[81] "Titus, cognomine paterno, *amor ac* "*deliciæ generis humani.*" Suet. in Tit. 1. "At illi ea fama pro bono ceſſit, converſaque "eſt in maximas laudes: neque ullo vitio "reperto, et contra virtutibus ſummis." Id. ib. 7. Ὁ δὲ δὴ Τῖτος οὐδὲν οὔτε φονικὸν, οὔτε ἀρῶϊκον, μοναρχήσας ἔπραξεν, ἀλλὰ χρῆτες, καίπερ ἐπιβουλευθεὶς, καὶ σωφρων, καίτοι καὶ τῆς Βερενίκης ἐς Ῥωμην αὐθις ἐλθουσης, ἐγκλῖλο. ταχα μεν γαρ, ὁτι καὶ μάλιϛα ἐρᾶλο. Dio Caſſ. 66. 18. In many circumſtances of this prince's character is to be found a ſtriking reſemblance to the hero of Agincourt in later times; who, by a long courſe of diſſipation and profligacy, having given a juſt alarm to all the peaceable and virtuous part of his ſubjects, on his coming to the crown, inſtantly

——"converted their fears
"By number into hours of happineſs;
"And mocked the expectations of the
"world." Shakeſp.

from

from Rome[82], and from thenceforward devoted himſelf wholly to the buſineſs of government; anticipating the wiſhes of his ſubjects, by unſolicited indulgences[83]; and declaring every day loſt, that was not ſignalized by ſome inſtance of benevolence[84].

As an object of the higheſt conſequence to the happineſs of his people, Titus was peculiarly delicate in the choice of his friends and miniſters; preferring ſuch only as were moſt diſtinguiſhed by their political abilities, and whoſe eminent qualities made them equally neceſſary to the public, himſelf, and ſucceſſors[85]. The ſenators, who had been the firſt victims of the jealouſy and vengeance of preceding tyrants, now enjoyed their lives and privileges in perfect ſecurity; neither did any inferior citizens fall by the hand of the executioner, during the whole of his reign. Inquiſition for treaſon againſt his own perſon he neither made himſelf, nor would ſuffer to be made by others; relying upon the purity of his own intentions; nor conceiving it poſſible for any one to offer him an injury, while he ſtudiouſly avoided every occaſion of offence; and conſcious of doing nothing worthy of reprehenſion, he treated falſehood and calumny with a generous contempt[86]. Such purity of

[82] "Berenicen ſtatim ab urbe dimiſit, invitus invitam." Suet in Tit. 7.

[83] "Natura autem benevolentiſſimus, cum "ex inſtituto Tiberii omnes dehinc Cæſares "beneficia a ſuperioribus conceſſa principibus, aliter rata non haberent, quam ſi "eadem iiſdem et ipſi dediſſent: primus "præterita omnia uno confirmavit edicto, "nec a ſe peti paſſus eſt." Id. ib. 8. Πολλα δε και αλλα προς τε το ασφαλες και προς το αλυπον των ανθρωπων καλιεργησαιο. και γαρ γραμμαια εξεθηκε, βεβαιων παντα τα ὑπο των προτερων αυτοκρατορων δεδομενα τισιν, ὡστε μη καθ' ἑκαστους σφων αιτιας αυτον πραγματα εχειν. Dio Caſſ. 66. 19.

[84] "Recordatus quondam ſuper cœnam, "quod nihil cuiquam toto die præſtitiſſet, "memorabilem illam meritoque laudatam "vocem edidit; *Amici, diem perdidi.*" Suet. in Tit. 8.

[85] "Amicos elegit, quibus etiam poſt "eum principes, ut ſibi et reipublicæ neceſſariis, acquieverunt, præcipuèque uſi "ſunt." Id. ib. 7.

[86] Ου μην αλλ' ὁ Τιτος ουδενα των βουλευτων. ει τη αυτου ἡγεμονια απεκτεινεν, αλλ' ουδε αλλος τις αυτῳ επι της αυτου αρχης τελευτησει. τας τε δικας τας της ασεβειας ουτ' αυτος ποτε ἑδεξατο, ουτ' αλλοις επετρεψεν· λεγων ὁτι, "Εγω μεν ουδεν ουθ' ὑβρισθηναι, "ουτε προπηλακισθηναι δυναμαι. ουτε γαρ αξιον τι "κατηγοριας ποιω, ουτε μοι μελει των ψευδως λεγομε"νων." Dio Caſſ. 66. 19.

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ſentiment may, perhaps, argue rather a want of knowledge of human nature; but it certainly does great credit to the integrity of his heart. Not that he was inſenſible to the fatal miſchiefs brought upon ſociety at large by theſe pernicious vices, though he deſpiſed them as far as they concerned himſelf; but well knowing how much the repoſe of the innocent was diſturbed, and the tranſgreſſions of the guilty were aggravated, by the malicious accuſations of informers, a ſwarm of peſtilential vermin, generated from the corruption and tyranny of the late unhappy times; he puniſhed them with ſcourging, ſlavery, or baniſhment, as the atrociouſneſs of their crimes deſerved [87].

An eminent, and generally very judicious, hiſtorian has thought proper to aſcribe theſe virtues of Titus to his want of time to be a tyrant, rather than to want of inclination. He mentions it likewiſe, as the current opinion of the world, that, upon a compariſon of his character with that of Auguſtus, the latter was indebted, for the high ſhare of public eſteem which he enjoyed, to the length of his reign, the former, to the ſhortneſs of it. That the longævity of Auguſtus ſupplied him with the happy opportunity of atoning, by a future courſe of mercy and benevolence, for the numerous acts of cruelty and injuſtice, into which he had been hurried in his younger days, by the diſtractions of the times; whereas Titus, having ſet out with a bright diſplay of clemency and goodneſs, was ſoon ſnatched away in the flower of manhood, and the height of glory: but had he lived to a longer period, he might have proved, in the end, more fortunate than virtuous [88].

Such

[87] Τους μηνυλας εξηλασιν εκ της πολεως. Dio Caſſ. 66. 19. "Inter adverſa temporum, et "delatores mandatoreſque erant ex licentia "veteri. Hos aſſiduè in foro flagellis ac "fuſtibus cæſos, ac noviſſime traductos per "amphitheatri arenam, partim ſubjici, ac "vænire imperavit; partim in aſperrimas "inſularum avehi." Suet. in Tit. 8.

[88] Ηδη δε και ὁτι επι βραχυταλον, ὡς γε ες ἡγεμονιαν επιτιν, επιβιου, ὡς μηδ' ἁμαρτιαν τινα αυλῳ εγγενεσθαι.

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Such reflexions, indeed, might naturally occur to a people, whoſe hopes of better days, on the change of their governors, had been ſo often, and ſo cruelly, diſappointed; who, having been eye-witneſſes of the ſtrange and unexpected degeneracy of Caligula and Nero, concluded that all princes were the ſame; and that this fair profeſſion of virtue, was no more than a calm portending an earthquake. An early conformity to the practices of an immoral and debauched age, by which he had already much debaſed his character, gave them but too good reaſon to conclude, that an increaſe of power would only facilitate the progreſs of a diſtempered habit. Their mind had been ſo long intent upon this gloomy ſide of the proſpect, that they were blind to all other objects, but thoſe of deſolation and deſpair. But, after all, their ſuſpicions were more awake than their judgments; their fears had overcome their hopes, and left them no leiſure to conſider, that pleaſure and diſſipation may ſometimes engroſs the paſſions, without utterly corrupting the heart. Human nature is not always ſo depraved, but that the ſeeds of virtue, when once implanted in a kindly ſoil, though dormant for a while, will ſpring up in due time in their full perfection of ſtrength and beauty; and ſtifle the more luxuriant, though leſs vigorous, weeds of vice by which their growth was at firſt retarded. All this was amply verified in Titus; who ſtands forth as a rare example of the triumph of virtue over the faſcinations of power. His acceſſion to the imperial throne wrought an entire change in his manners; inſpired him with a juſt ſenſe of the duties of his eminent ſtation; and taught him to exert all his future endeavours in reſtoring the tranquillity of a diſtracted conſtitution; and in maintaining the liberties of a brave and illuſtrious people [89].

εγγενεσθαι.—και αυτος εξισου καιπα τουτο τη του Αυγουστου πολυειμα αγουσι, λεγοντες ὁτι ουτ' αν εκεινος εφιληθη πωτε, ει ελαττω χρονον εζηκει, ουτ' αν ουτος, ει πλειονα. ὁ μεν, ὁτι τραχυτερος κατ' αρχας δια τε τους πολεμιους και δια τας ταξεις γενομενος, ηδυνηθη μετα ταυτα ενεργεσιαις εν τω χρονω λαμπρυνεσθαι· ὁ δ', ὁτι επεικως αρξας, εν ακμη της δοξης απεθανε· ταχα αν ελεγχθεις, ειγε επι μακρον εβεβιωκει, ὁτι ευτυχια πλειον η αρετη εχρησατο. Dio Caſſ. 66. 18.

[89] "Populum in primis univerſum—per "omnes occaſiones comitate tractavit." Suet. in Tit. 8.

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But the envious hand of death ſuddenly deprived them of this bleſſing, after a ſhort reign of two years[90], much more to his country's misfortune than his own[91].—Could ſuch a prince be immortal, deſpotiſm itſelf would loſe its terrors.

Domitian, A. D. 81.

Domitian had exerciſed various parts of the Imperial office, in his father's life-time; but in ſo licentious and irregular a manner, as to afford too certain a preſage of his future tyranny[92]. On the death of Veſpaſian he endeavoured to make the world believe, that a ſhare of the empire had been bequeathed to him, but that he had been defeated of his right, by a falſification of the will[93]. This ſerved as a pretence for him, to engage in open and daily conſpiracies againſt Titus[94]; and, when in poſſeſſion of the throne himſelf, to teſtify his hatred both of his father and brother, by treating their beſt friends with every ſpecies of indignity; and by holding them in the light of his moſt inveterate enemies[95].

The adminiſtration of this prince was fickle and variable; perpetually fluctuating between the two extremes of gentleneſs and ſeverity. Among a multitude of blemiſhes, he had many ſplendid, and ſome valuable, qualities: but as the beſt of them ſprang more from caprice and oſtentation, than from any real goodneſs of heart, their operations were uncertain, and their effects imperfect. His virtues, having no ſolid principle for their ſupport, eaſily degenerated into vices;

[90] Δυο τι γαρ ετη μιλα τουλο, και μηνας δυο, ἡμερας τε εικοσιν εξησεν, επ' ενια και τριακοντα ἐτεσι, και μησι πενλε, και ἡμεραις πενλε και εικοσι. Dio Caſſ. 66. 18.

[91] "Inter hæc morte præventus eſt, ma-
"jore hominum damno quam ſuo." Suet. in Tit. 10. "Hujus ſane mors adeo pro-
"vinciis luctui fuit, uti, *generis humani* "*delicias* appellantes, orbatum orbem de-
"flerent." Aur. Vict. de Cæſ. 10.

[92] "Cæſar conſalutatus honorem prætura
"urbanæ conſulari poteſtate ſuſcepit titulo
"tenus, quam juriſdictionem ad collegam
"proximum tranſtulit. Cæterum omnem
"vim dominationis tam licenter exercuit, ut
"jam tum, qualis futurus eſſet, oſtenderet." Suet. in Dom. 1.

[93] "Patre defuncto,—nunquam jactare
"dubitavit, *relictum ſe participem imperii, ſed*
"*fraudem teſtamento adhibitam.*" Id. ib. 2.

[94] "Neque ceſſavit ex eo inſidias ſtruere
"fratri clam palamque." Id. ib. 2.

[95] Τοιουτος δε δη προς παιλας παρ' ὀλην την ἡγιμονιαν γενομενος, πολυ και ἑαυλου ὑπερβαλετο. εν τη των του παιρος του τε αδελφου φιλων ατιμιᾳ τε και ολεθριᾳ μεταχειρισει. And again, Παν γαρ το ὑπερ τους πολλους αγαπηθεν τε ὑπ' αυλων και δυηθεν, εν ἐχθρου μοιρα ετιθετο. Dio Caſſ. 67. 2.

and this vicious propenſity was heightened by peculiar circumſtances, which forced him beyond the bounds of his own natural diſpoſition; ſo that he frequently became rapacious through neceſſity, and cruel through fear[96].

With a munificence worthy of Titus, he reſtored the antient edifices which had been ruined in the late conflagrations; but, envious of every one's honor but his own, made all the repairs in his own name, not preſerving the leaſt memorial of the original founders[97]. From the ſame jealous motive he deprived certain celebrated authors of their lives, and committed their works to the flames, for daring to ſpeak in praiſe of ſome eminent perſonages of late times[98]; conſcious, perhaps, that his own character would ſuffer by the compariſon. He likewiſe puniſhed all ſcholars and philoſophers with death or baniſhment[99]; while, with an inconſiſtency peculiar to himſelf,

[96] "Circa adminiſtrationem imperii aliquandiu ſe varium præſtitit: miſtura quoque æquabili vitiorum atque virtutum, donec virtutes quoque in vitia deflexit: quantum conjectare licet, ſuper ingenii naturam, inopia rapax, metu ſævus." Suet. in Dom. 3.

[97] "Plurima et ampliſſima opera incendio abſumpta reſtituit: in queis et Capitolium, quod rurſus arſerat: ſed omnia ſub titulo tantum ſuo, ſine ulla priſtini auctoris memoria." Suet. in Dom. 5.

[98] "Junium Ruſticum, quod Pæti Thraſeæ et Helvidii Priſci laudes edidiſſet, appellâſſetque eos *Sanctiſſimos Viros*,—occidit." Suet. in Dom. 10. "Legimus cum Aruleno Ruſtico Pætus Thraſea, Herennio Senecioni Priſcus Helvidius laudati eſſent, capitale fuiſſe: neque in ipſos modo auctores, ſed in libros quoque eorum ſævitum, delegato triumviris miniſterio, ut monumenta clariſſimorum ingeniorum in comitio ac foro urerentur." Tac. in Agric. 2.

[99] Αλλοι τε εκ της αυλης ταυλης τους καλα των φιλοσοφιαν αιλιας συνχνους διωλοιλο· και οι λοιπους παλες εξηλασθησαν ανθις εκ της Ρωμης. Dio Caſſ. 67. 13. "Philoſophos omnes urbe Italiaque ſummovit." Suet. in Dom. 10. "C. Fannio Strabone, M. Valerio Meſſala, Coſſ. S. C. de philoſophis et rhetoribus Latinis factum eſt;—neque illis ſolum temporibus nimis rudibus; nec dum Græca doctrina expolitis, philoſophi ex urbe Roma pulſi ſunt, verum etiam Domitiano imperante ſc. ejecti, atque urbe et Italia interdicti ſunt. Qua tempeſtate Epictetus quoque philoſophus propter id S. C. Roma deceſſit." Aul. Gell. 15. 11. Upon all which acts of tyranny Tacitus makes the following pathetic lamentation: "Scilicet in illo igne vocem populi Romani, et libertatem ſenatus, et conſcientiam generis humani aboleri arbitrabantur, expulſis inſuper ſapientiæ profeſſoribus, atque omni bona arte in exilium acta, ne quid uſquam honeſtum occurreret. Dedimus profectò grande patientiæ documentum, et

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himſelf, he repaired the decayed libraries, and ſupplied them with books, collected from all parts of the world, at an immenſe expence [100].

He appears to have had a very competent knowledge of thoſe matters which are moſt neceſſary to the daily comfort and ſupport of a populous nation [101]; and ſhewed a juſt ſenſe of it, by many uſeful regulations for the encouragement of agriculture. Finding that the too univerſal cultivation of vines was the cauſe of the ſcarcity of corn, he prohibited the planting of any new vineyards in Italy, and directed that one half of thoſe in the provinces ſhould be deſtroyed; but ſoon fruſtrated the good effects of theſe inſtitutions, by want of perſeverance [102].

Regardleſs of every principle of common juſtice, as far as it affected his own conduct, he was yet very careful that it ſhould be properly adminiſtered by others: he, therefore, reſcinded many decrees which had been corruptly given; ſetting a mark of infamy upon ſuch judges as accepted bribes; and keeping ſo ſtrict an eye over the magiſtrates, both in the city and the provinces, that more moderate or juſt ones were no where to be found; though moſt of them, at his death, relapſed into their former iniquities [103].

" et ſicut vetus ætas videt, quid ultimum in " libertate eſſet, ita nos quid in ſervitute, " adempto per inquiſitiones et loquendi " audiendique commercio. Memoriam quo- " que ipſam cum vita perdidiſſemus, ſi tam " in noſtra poteſtate eſſet obliviſci quam " tacere." Tac. in Agric. 2.

100 " Liberalia ſtudia in initio imperii " neglexit, quanquam bibliothecas incendio " abſumptas impenſiſſimè reparare curaſſet, " exemplaribus undique petitis: miſſiſque " Alexandriam, qui deſcriberent emenda- " rentque." Suet. in Dom. 20.

101 " Multa etiam in communi rerum uſu " notavit." Suet. in Dom. 7.

102 " Ad ſummam quandam ubertatem " vini, frumenti vero inopiam, exiſtimans " nimio vinearum ſtudio negligi arva, edixit, " *ne quis in Italia novellaret, utque in pro-* " *vinciis vineta ſuccciderentur, relicta, uti* " *plurimum, dimidia parte:* nec exequi rem " perſeveravit." Id. ib.

103 " Jus diligenter et induſtrie dixit. " Plerumque et in foro pro tribunali extra " ordinem ambitioſas centumvirorum ſen- " tentias reſcidit. Recuperatores, ne ſe " perfuſoriis aſſertionibus accommodarent, " identidem admonuit. Nummarios judices " cum ſuo quemque conſilio notavit. Auc- " tor et tribunis plebis fuit, ædilem ſordidum " repetundarum accuſandi, judiceſque in " eum a ſenatu petendi. Magiſtratibus " quoque urbicis, provinciarumque præſi- " dibus coercendis, tantum curæ adhibuit, " ut neque modeſtiores unquam, neque juſ- " tiores extiterint: e quibus pleroſque poſt " illum reos omnium criminum vidimus." Id. ib. 8.

Without

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Without the leaſt ſenſe of ſhame or modeſty in his own behaviour, he ſet up for a general reformer of manners; and puniſhed all offences againſt common decency with extreme ſeverity[104]. From a pretended reverence for religion, he deſtroyed a monument erected by a father to the memory of his ſon, out of the ſtones deſigned for the temple of Jupiter Capitolinus, cauſing the bones and remains to be thrown into the ſea[105]: and yet he made no ſcruple of aſpiring to divine honors; commenced all his decrees and epiſtles with this impious preface, *Thus commands our Lord and God*; aſſumed theſe titles in all future writings and addreſſes; and would permit no ſtatues to be erected to him in the Capitol, but ſuch as were made of gold or ſilver, and of a ſtandard weight[106].

In the earlier part of his life, being entruſted with the adminiſtration in the abſence of his father, he was going to make a decree to prohibit the killing of oxen for ſacrifices, from a motive of compaſſion excited by the reflexion of a tender-hearted poet. His uſual converſation with his friends abounded in high ſtrains of generoſity, wherein he exhorted them, in the moſt earneſt terms, to abſtain from every appearance of ſordidneſs and parſimony; himſelf ſetting the

[104] Of which the following inſtances are recorded by his biographer: "Suſcepta "morum correctione, licentiam theatralem "promiſcue in equite ſpectandi inhibuit. "Scripta famoſa, vulgoque edita, quibus "primores viri ac fœminæ notabantur, abolevit non ſine autorum ignominia. Quæſtorium virum, quod geſticulandi ſaltandique ſtudio teneretur, movit ſenatu. "Probroſis fœminis lecticæ uſum ademit, "juſque capiendi legata hæreditateſque. "Equitem Romanum, ob reductam in matrimonium uxorem, cui demiſſæ adulterii "crimen intenderat, erafit judicum albo. "Quoſdam ex utroque ordine lege Scatinia "condemnavit. Inceſta Veſtalium virginum, a patre ſuo quoque et fratre neglecta, "varie ac ſevere coercuit: priora capitali "ſupplicio, poſteriora, more veteri." Suet. in Dom. 8.

[105] "Ne qua religio Deûm impune contaminaretur, monumentum quod libertus "ejus e lapidibus templo Capitolini Jovis "deſtinatis filio conſtruxerat, diruit per milites, oſſaque et reliquias, quæ inerant, "mari merſit." Id. ib.

[106] "Pari arrogantia cum procuratorum "ſuorum nomine formalem dictaret epiſtolam, ſic cœpit; *Dominus et Deus noſter ſic* "*fieri jubet*. Unde inſtitutum poſthac, ut "ne ſcripto quidem ac ſermone cujûſquam "appellaretur aliter. Statuas ſibi in capitolio nonniſi aureas et argenteas poni permiſit, ac ponderis certi." Id. ib. 13.

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example by many ſignal acts of liberality and ſelf-denial[107]. He was particularly ſevere upon that infamous crew of ſycophants, ſo common in thoſe days of oppreſſion, who made a trade of diſcovering every offence againſt the revenue; holding it as a maxim, "that the prince who did not puniſh informers, encouraged "them[108]."

But the ſalutary effects of theſe ſeeming virtues were ſoon defeated by the inconſtancy of his temper; though his approaches to covetouſneſs were much ſlower than thoſe to cruelty[109]. His very hours of ſolitude and retirement were employed in the tortures of harmleſs inſects: a circumſtance, which, as an eminent writer obſerves, is beneath the dignity of hiſtory to record, except only as it exhibits a juſt ſpecimen of his character, and eſpecially, as he purſued the ſame amuſement when he became Emperor[110]. But from theſe trifling and ridiculous inſtances of barbarity, which at firſt made him only contemptible, the tranſition was both eaſy and rapid to thoſe which rendered him the object of terror and deteſtation. He

reduced

[107] "Inter initia uſque adeo ab omni "cæde abhorrebat, ut abſente adhuc patre, "recordatus Virgilii verſum,

"*Impia quam cæſis gens eſt epulata juvencis*;

"edicere deſtinaverit, *Ne boves immolarentur*. "Cupiditatis quoque atque avaritiæ vix ſuſ"picionem ullam, aut privatus unquam, "aut princeps aliquandiu dedit: imo e di"verſo magnæ ſæpe non abſtinentiæ modo, "ſed etiam liberalitatis experimenta. Om"nes circa ſe largiſſime proſecutus, nihil "prius aut acrius monuit, quam ne quid "ſordide facerent. Relictas ſibi hæreditates "ab iis quibus liberi erant, non recepit." Suet. in Dom. 9.

[108] "Fiſcales calumnias, magna calum"niantium pœna repreſſit, ferebaturque "vox ejus: *Princeps qui non delatores caſti"gat, irritat.*" Id. ib.

[109] "Sed neque in clementiæ, neque in "abſtinentiæ tenore permanſit; et tamen "aliquanto celerius ad ſævitiam deſcivit, "quam ad cupiditatem." Id. ib. 10.

[110] "Inter initia principatus, quotidie "ſecretum ſibi horarium ſumere ſolebat: "nec quidquam amplius quam muſcas cap"tare, et ſtylo præacuto configere; ut "cuidam interroganti, *Eſſetne quis intus cum "Cæſare?* non abſurde reſponſum ſit, a "Vibio Criſpo, *Ne muſca quidem.*" Id. ib. 3. Εν γουν τω Αλβανω χωριω τα πλειστα διαγων, αλλα τι πολλα και γελοια επραττε, και τας μυιας γραφιους καλουμενα. τουτο γαρ ει και αναξιον του της ιστοριας εγκωμιαστου, αλλ' ὁτι γε ικανως τον τροπον αυτου ενδεικνυται, αναγκαιως εγραψα· και μαλιστ' ὁτι και μοναρχησας ὁμοιως αυτο εποιει. Ὁθεν ουκ αχαριτως τις ειπε προς τον ερωτησαντα, τι πραττει Δομιτιανος; ὁτι ιδιαζει τι, και ουδε μυια αυτω παρακαθηται. Dio Caſſ. 66. 9.

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reduced the practice of them to almoſt a ſcience; and by a ſingular refinement in the arts of bloodſhed, cheered with inſidious ſmiles, and flattered with profeſſions of the warmeſt eſteem, ſuch as he had marked out for the moſt determined victims of his malice [111]. It was his avowed opinion, that thoſe Emperors, who had been ſparing in the infliction of puniſhments, were more fortunate than virtuous. He deſpiſed thoſe who extolled Titus, for having never put a ſenator to death; and could not be perſuaded to yield to the preſſing intreaties of the fathers, who ſolicited his aſſent to a law, to reſtrain future princes from the inhuman privilege of murdering their equals at diſcretion [112].

After all his former declamations in praiſe of generoſity, of his own pretended diſintereſtedneſs, and ſeverity againſt extortioners and informers, finding his coffers exhauſted by his former extravagances, he firſt thought of leſſening his military expences, by a diminution of the army. But this being warmly oppoſed by the foreign troops, he plundered without mercy the goods both of the living and dead, upon the ſlighteſt accuſations; and confiſcated the inheritances of the greateſt ſtrangers, if any ſingle witneſs could be found to depoſe, that the deceaſed had, when living, declared that *Cæſar was his heir* [113].

Conſcious,

[111] "Erat autem non ſolum magnæ, ſed "et callidæ inopinatæque ſævitiæ. Auctorem ſummarum pridie quem cruci ſuffigeret, in cubiculum vocavit, aſſidere in toro juxta coegit, ſecurum hilaremque dimiſit, partibus etiam de cœna dignatus eſt." Suet. in Dom. 11.

[112] Το δ' ὀλον, ὀλιγα τους αὐτοκρατορας, τους μη πολλους κολαζοντας, ουκ ἀγαθους, ἀλλ' ἀτυχεις εἰναι. αὐτος δ' ουτε φροντιζε τουδε των των Τῖτον ἐπαινουντων, ὀτι μηδενα βουλευτην ἀπεκτεινε, οὐδ' ὀτι ἡ γερουσια πολλακις αὐτον ἐδεησθη, μη ἀξιωσαι τον αὐτοκρατορα των ὁμοιων τινα ἀποκτεῖναι. Dio Caſſ. 67. 2.

[113] "Exhauſtus operum ac munerum impenſis, ſtipendioque quod adjecerat, tentavit quidem, ad relevandos caſtrenſes ſumptus, militum numerum diminuere. Sed cum obnoxium ſe barbaris per hoc animadverteret; neque eo ſecius in explicandis oneribus omnibus hæreret, nihil penſi habuit quin prædaretur omni modo. Bona vivorum et mortuorum uſquequaque, quolibet et accuſatore et crimine, corripiebantur: ſatis erat objici qualecunque factum dictumque adverſum majeſtatem principis. Confiſcabantur alieniſſimæ hæreditates: vel exiſtente uno

"qui

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Conſcious, at laſt, that he had loſt the confidence, and incurred the general odium of mankind, he felt and lamented the unhappy condition of princes, that no credit was ever given to reports of conſpiracies formed againſt them, till it was too late to guard againſt the conſequences [114]; of which he ſoon became a melancholy example. Plots were daily contrived by his moſt intimate friends, and even by his wife [115]; and when he complained of them to the ſenate, little notice was taken, nor any concern ſhewn to detect or apprehend the conſpirators; ſo that he lived in a perpetual ſtate of ſuſpicion and anxiety [116], till he fell by the very death he had ſo long dreaded.

Profligate and abandoned as he was, he had juſt religion enough remaining, to fill his mind with credulity and ſuperſtition; and to encourage him in a reliance upon dreams and viſions. From hence he is ſaid to have foretold, that the Roman ſtate would be much more happy and joyful after his death; an event, that required no great ſpirit of prophecy to foreſee, and which was verified in fact, by the wiſdom and humanity of the ſucceeding princes [117].

The tidings of his death were received with great indifference by the populace, and with indignation by the ſoldiery, who prepared to revenge it, and pronounced him a God. But the ſenate were ſo tranſported with joy, that they inſtantly treated his character with the bittereſt reproaches; erazed and annulled his acts;

" qui diecret, *audiſſe ſe ex defuncto cum* " *viveret, hæredem ſibi Cæſarem eſſe.*" Suet. in Dom. 12.

114 " *Conditionem principum miſerrimam,* " aiebat, *quibus de conjuratione comperta non* " *crederetur, niſi occiſis.*" Id. ib. 20.

115 " Per hæc terribilis cunctis et inviſus, " tandem oppreſſus eſt amicorum liberto- " rumque intimorum conſpiratione, ſimul " et uxoris." Id. ib. 14.

116 " Quare pavidus ſemper atque anxius, " minimis etiam ſuſpicionibus præter modum " commovebatur." Id. ib.

117 " Ipſum Domitianum ferunt ſom- " niaſſe, gibbam ſibi pone cervicem auream " enatam: pro certoque habuiſſe, beatiorem " poſt ſe lætioremque portendi ſtatum rei- " publicæ. Sicut ſane brevi evenit, abſti- " nentia et moderatione inſequentium prin- " cipum." Id. ib. 23.

and

and endeavoured, as far as in them lay, to eradicate his very memory [118].

The greateſt part of the ſucceeding century may very juſtly be conſidered as the golden æra of the Roman conſtitution; when the minds of the people were relieved from their former terrors; when their lives and properties were ſecured againſt the arbitrary invaſions of deſpotiſm; and the internal tranquillity of the empire reſtored, under a long ſucceſſion of wiſe and virtuous princes, who ſeemed to aſpire to power with no other view, than to exert it in rendering their ſubjects happy [119]. This was ſo pleaſing a topic of contemplation, that the great Roman Hiſtorian, who had before ſo boldly and impartially inveighed againſt the oppreſſions of former tyrants, had reſerved the reigns of Nerva and Trajan for the ſolace of his old age: an idea, which he dwells upon with ſatisfaction and rapture [120].

Though the ſuſpicious temper of Domitian had obliged the conſpirators to accelerate his death; yet, before they executed this neceſſary act of juſtice, they were very careful to provide a ſucceſſor. This was Nerva: a perſon not more diſtinguiſhed by the nobility of his birth, than by the excellence of his diſpoſition; one, likewiſe, already devoted to deſtruction, in conſequence of the predictions of

Nerva, A. D. 96.

[118] "Occiſum eum, populus indifferenter, "miles graviſſime, tulit, ſtatimque eum *divum* appellare conatus eſt: paratus et ulciſci, niſi duces defuiſſent, quod quidem paulo poſt fecit, expoſtulatis ad pœnam pertinaciſſimè cædis autoribus. Contra ſenatus adeo lætatus eſt, ut repleta certatim curia non temperaret, quin mortuum contumelioſiſſimo atque acerbiſſimo acclamationum genere laceraret: ſcalas etiam inferri, clypeoſque et imagines ejus coram detrahi, et ibidem ſolo affligi juberet: noviſſime eradendos ubique titulos, abolendamque omnem memoriam decerneret." Id. ib. Μετὰ δὲ τοῦτον Δομιτιανὸν, αἱ εἰκόνες αὐτοῦ, πολλαὶ μὲν ἀργυραῖ, πολλαὶ δὲ καὶ χρυσαῖ οὖσαι, συνεχωνεύθησαν, καὶ ἐξ αὐτῶν μεγάλα χρήματα συνελέγη· καὶ αἱ ἀψῖδες, πλεῖσαι δὴ ἐν ἀνδρὶ ποιούμεναι, καθῃρέθησαν. Dio Caſſ. 68. 1.

[119] "Anno octingenteſimo et quinquageſimo ab urbe condita, Vetere et Valente conſulibus, reſpublica ad proſperrimum ſtatum rediit, bonis principibus ingenti felicitate commiſſa." Eutrop. 8. 1.

[120] "Quod ſi vita ſuppeditet, principatum Divi Nervæ, et imperium Trajani, uberiorem ſecurioremque materiam ſenectuti ſepoſui." Tac. Hiſt. 1. 1.

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the impoſtors who ſwarmed about the court of that jealous tyrant, whoſe conſcience was ever ready to alarm his fears; and whoſe ſuperſtition induced him to fancy the name of *Emperor* written upon the forehead of every one, who had virtue to deſerve it [121].

The appointment of Nerva was confirmed by the unanimous approbation of every order of men in the Roman ſtate [122]; and his future conduct amply juſtified their choice. Though his age and infirmities promiſed him but little hopes of any long enjoyment of his honors [123], he every day gave ſome new inſtances of the real benevolence of his heart; and convinced them, by the mildneſs of his government, that the liberty of the people is not irreconcilable with the authority of the prince [124]. From a juſt contempt of the extravagant vanity of his predeceſſor, he forbad the erection of any ſtatues of gold or ſilver to himſelf. Whatever he found in the treaſury, which had been illegally extorted by Domitian, he reſtored to the original owners. He took the poorer citizens under his immediate protection; diſtributed lands among them; and ſold his plate, furniture, and even his own family eſtates, to relieve their ne-

[121] Ηκουσα εγωγε και εκεινο, ſays the hiſtorian, ὁτι παυλας ἁμα αὐλους ὁ Δομιτιανος ὑποκλυσας, αποκλεινει ηθελησε, και σφων τα ονομαλα ες σανιδιον φιλυρινον διθυρον εσγραψας, ὑπο το προσκεφαλαιον εν τῃ κλινῃ, ἐν ᾗ ανεπαυιλο, ὑπεθηκε.—κ᾽ μετ τουτου, και αλλως διανοουμενοι, συνταχυναν την επιβουλην. ου μεντοι προτερον επεχειρησαν εργῳ, πριν τον διαδεξομενον την αρχην αὐτου βεβαιωσασθαι. διελεξαντο μεν δῃ και αλλοις τισι· μηδενος δε εκεινων δεξαμενου, (παυλις γαρ αὐλους ὡς διαπειρωμενους σφων εφοβηθησαν), επι τον Νερουαν ηλθον, επειδη και ευγενεσταλος και επιεικεσταλος ην, και προσετι και εκινδυνευσε διαφθαρηναι ὑπ᾽ ασγελογων, ὁτι μοναρχησει φησαντων· εξ ὁυπερ ἑαυτον επεισαν αὐτου αναδεξασθαι την ἡγεμονιαν. Dio Caſſ. 67. 15.

[122] Μετα δε Δομιτιανον, Νερουαν Κοκκηϊον ὁι Ρωμαιοι ἀπεδεξαν αὐτοκρατορα. Dio Caſſ. 68. 1. "A ſenatu gratanter exceptus eſt." Sex. Aur. Vict. epit. 12.

[123] Ην δε ὁ Νερουας ὑπο τε του γηρως και ὑπ᾽ ασθενειας—ασθενεστερος. Dio Caſſ. 68. 1.

[124] "Nunc demum redit animus, et quamquam primo ſtatim beatiſſimi ſæculi ortu Nerva Cæſar res olim diſſociabiles miſcuerit, principatum ac libertatem, augeatque quotidie felicitatem imperii Nerva Trajanus; nec ſpem modo ac votum ſecuritas publica, ſed ipſius voti fiduciam, ac robur aſſumpſerit; natura tamen infirmitatis humanæ, tardiora ſunt remedia quam mala." Tac. in Vit. Agric. 3.

neceſſities.

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ceſſities [125]. He bound himſelf by a ſolemn oath never to put a ſenator to death, and perſevered in that reſolution, notwithſtanding the many conſpiracies that were formed againſt him: always directing himſelf by the advice of the leaders of that body, and enacting many laws under the ſanction of their authority; one, in particular, to prohibit an unnatural practice, at this day too common in the ſame country, to the great detriment of the human race [126]. Conſcious of his own integrity, he had the courage to declare, "that he had "done nothing to prevent him from laying down the load of go-"vernment, and retiring in ſafety [127]:" but finding, after all, that his own perſonal virtues were no protection againſt the machinations of traitors, and that his years expoſed him to contempt, he boldly aſcended the Capitol, where he publicly adopted Trajan as his ſon, partner, and ſucceſſor; pronounced him Cæſar in preſence of the ſenate, and intruſted with the power of avenging his wrongs [128].

[125] Ἀπεπτε δε και ανδρασιας αυτῳ χρυσους γινεσθαι, τοις δε των ουσιων επι του Δομιτιανου μαλιστ' εστερημενοις παντα απεδωκεν, ὁσα εν τῃ βασιλειᾳ ετι οὐα ἐωρᾶτο. τοις τε πανυ πενησι των Ῥωμαιων ες χιλιαδα και πεντακοσιας μυριαδας γης κλησιν εχαρισατο, βουλευσας τισι των τε αγορασιαν αυτων και την διανομην προσταξας. χρημασιν δε απορων, πολλα μεν ἱματια, και σκευη και αργυρα και χρυσα, αλλα τε επιπλα, και εκ των ἰδιων και των βασιλικων, πολλα δε και χωρια και οικιας, μαλλον δε παντα, πλην των αναγκαιων, απεδοτο. ου μεντοι και περι τας τιμας αυτων ἐμικρολογησατο, αλλα και εν αυτῃ τουτῳ πολλους ενηργετησε. Dio Caſſ. 68. 2. "Iſte quicquid antea "pœnæ nomine tributis acceſſerat, indulſit: "afflictas civitates relevavit: puellas, pue-"roſque natos parentibus egeſtoſis ſumptu "publico per Italiæ oppida ali juſſit." Sex. Aur. Vict. epit. 12.

[126] Ὡμοσε δε και εν τῃ συνεδριῳ, μηδενα των βουλευτων φονευσειν· εβεβαιωσε τε τον ὁρκον, καιπερ επιβουλευθεις. επραξε δε ουδεν ἀνευ, τι μη μετα των πρωτων ανδρων. νομοθετησε δε αλλα τε και περι του μη επουχιζεσθαι τινα. Dio Caſſ. 68. 2.

[127] Νερουας δε ὁυλως ηρξε καλως, ὡστε ποτε ειπειν, "Ουδεν τοιουτον πεποιηκα, ὡστε μη δυνασθαι την "αρχην τε καταθεσθαι, και ασφαλως ἰδιωτευσαι." Dio Caſſ. 68. 3.

[128] Κρασσου τε Καλπουρνιου—επιβουλευσαντος μετα και αλλων αυτῳ—ἐθνη ὁ Νερουας, δια το γηρας βαθυ καταφρονουμενος, ανεβη τε ες το Καπιτωλιον, και εφη γεγενησας, "Αγαθῃ τυχῃ της τε βουλης "και του δημου των Ῥωμαιων, και ἐμου αυτου, "Μαρκου Ουλπιου Νερουαν Τραϊανον ποιουμαι." και μεν εν τῃ συνεδριᾳ Καισαρα τε αυτον απεδειξε, και απεγειλεν αυτῳ αυτοκειρια (ηρξε δε της Γερμανιας εκεινος).

Τισιαν Δαναοι ἐμα δακρυα σοισι βελεσσι.

Dio Caſſ. 68. 3.

"Simul filius, ſimul Cæſar, mox Impera-"tor et conſors tribunitiæ poteſtatis, et "omnia pariter et ſtatim factus es." Plin. Pan. 8. "Hic Trajanum in liberi locum, "inque partem imperii adoptavit: cum quo "tribus vixit menſibus." Sex. Aur. Vict. epit. 12.

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Having, by this prudent proviſion, guarded againſt the miſchiefs of a diſputed ſucceſſion, he peaceably diſcharged the laſt debt to nature; and, as the higheſt token of the eſteem and reverence of his ſubjects, was interred in the ſame ſepulchre with the remains of Auguſtus [129].

Trajan, A. D. 98.

The adoption of an entire ſtranger both in family and nation, from a pure conviction of his being the fitteſt perſon in the whole empire, to diſcharge the duties of that important ſtation to which he was exalted, cannot fail to ſet the character of Nerva in the moſt favorable point of view in the eyes of poſterity; as it amounts to an irrefragable proof both of the goodneſs of his heart, and the ſolidity of his judgment; and that he ſincerely preferred the honor and intereſt of his country, to every private and perſonal conſideration of blood or friendſhip [130].

The impreſſion, which ſo ſubſtantial a mark of diſtinction made upon the mind of Trajan, appears from the ſpecimen he gave of the mild and equitable principles by which he intended to regulate his political conduct. Immediately on receiving the notice of his nomination to the imperial throne, he paid his profound reſpects to the ſenate, in a letter written with his own hand; in which he expreſſed the warmeſt eſteem for the worthy and virtuous, with an equal abhorrence and contempt of the vicious and profligate; aſſuring them that both their lives and reputations ſhould be ever ſafe under his protection. The natural bent of his diſpoſition, which was equally free from diſſimulation and aſperity, eaſily inclined him to adhere to this engage-

[129] "Nec multo poſt vitam finivit, anno "ætatis ſexageſimo tertio. Cujus corpus, a "ſenatu quondam Auguſto honore delatum, "in ſepulchro Auguſti ſepultum eſt." Sex. Aur. Vict. epit. 12.

[130] Ὁυτω μεν ὁ Τραϊανος Καισαρ, και μιλα τουτο αυθεκαιως ηγνιλο, καιτοι συγγενων του Νερουα ὁντων τινων. αλλ' ου γαρ της των κοινων σωτηριας ὁ ανηρ την συγγενειαν προετιμησεν. ουδ' αυ, ὁτι Ιβηρ ὁ Τραϊανος, αλλ' ουκ Ιταλος, ουδ' Ιταλιωτης ην, ἡττω τι παρα τουτο αυτος εποιησατο, επειδη μηδεις προσθεν αλλοιθνης το των Ῥωμαιων κρατος ισχηκει. τον γαρ αριστον, αλλ' ου την πατριδα τινος, ἐξεταζειν δικαιον ἡγειτο. Dio Caſſ. 68. 4.

ment with the moſt religious punctuality [131]; ſo that no more than one ſenator ſuffered death during the whole of his reign; and even that one, by the judgment of the ſenate alone, without the knowledge or privity of the Emperor [132]. The favorite object of his ambition ſeems to have been, to make his ſubjects feel all the benefits of his power, without its inconveniences; to conceal the auſtere character of the monarch, under the endearing one of the parent [133]; and to convince them that he was not leſs either a man or a citizen, becauſe he was their governor [134].

By a judicious cultivation of the ſocial virtues, too much neglected by the worthieſt of former princes, he eclipſed even his own military glory, and at once commanded both the reſpect and love of his people [135]. When blamed by ſome of his friends for ſo much condeſcenſion, he replied in theſe memorable words; "An Empe-" ror ought ſo to behave himſelf to private perſons, as he would

[131] Ὡς δὲ αὐτοκρατως ἐγενετο, ἐπιστειλε τῃ βουλῃ αὐτοχειρια ἀλλα τι, και ὡς ουδενα ανδρα αγαθον ἀποσφαξοι ἢ ἀτιμασοι. και ταυτα και ὁρκοις ου τοτε μονοις, ἀλλα και ὑστερον ἐπιγωσατο, και ἐργῳ ἐπιδωσει, καιπερ ἐπιβουλευθεις. τῃ τε γαρ φυσει ουδεν ουτε διπλουν ουτε δολιον, ουτε τραχυ ειχεν· ἀλλα τους μεν ἀγαθους ἐφιλει και ἐδεικνυτο και ἐτιμα, των δε ἀλλων ἠμελει. Dio Caſſ. 68. 5. Ουτ' ἐφθονει, ουτε καθῃρει τινα, ἀλλα και παυν παντας τους ἀγαθους ἐτιμα και ἐμεγαλυνε· και διὰ τουτο ουτε ἐφθειτο τινα αὐτων, ουτε ἐμισει. διαβολαις τε ἠκιστα ἐπιστευε, και ὀργῃ ἠκιστα ἐδουλουτο· των τε χρηματων των ἀλλοτριων ἰσα και φειδων των ἀδικων ἀπειχετο. Id. 68. 6.

[132] "Nihil non tranquillum et placidum " agens, adeo, ut omni ejus ætate unus tan-" tum ſenator damnatus ſit; atque is tamen " per ſenatum, ignorante Trajano." Eutrop. 8. 2.

[133] "Unde merito *Pater Patriæ* dictus " eſt." Sex. Aur. Vict. epit. 13.

[134] "Non de tyranno, ſed de cive, non " de domino, ſed de parente loquimur. " Unum ille ſe ex nobis, et hoc magis ex-" cellit atque eminet, quod unum ex nobis " putat: nec minus hominem ſe, quam ho-" minibus præeſſe meminit." Plin. Pan. 2. Φιλουμενος τε ουν ἐπ' ἀνθρωποις μαλλον, ἢ τιμωμενος ἐχαιρε, και τῳ τε δημῳ μετ' ἐπιεικειας συνηγετο, και τῃ γερουσιᾳ σεμνοπρεπως ὡμιλει· ἀγαπητος μεν πασι, φοβερος δὲ μονοις πλην πολεμιοις, ἠν. Dio Caſſ. 68. 7.

[135] "Romæ et per provincias æqualem ſe " omnibus exhibens; amicos ſalutandi cauſa " frequentans, vel ægrotantes vel cum feſtos " dies habuiſſent, convivia cum iiſdem indiſ-" creta viciſſim habens: ſæpe in vehiculis " eorum ſedens: nullum ſenatorum lædens: " nihil injuſtum ad augendum fiſcum agens: " liberalis in cunctos, publice privatimque " ditans omnes et honoribus augens, quos " vel mediocri familiaritate cognoviſſe—Ob " hoc per orbem terrarum Deo proximus, " nihil non venerationis meruit, et vivus et " mortuus." Eutrop. 8. 2. "Liberalis in " amicos: et tanquam vitæ conditione par, " ſocietatibus perfrui." Sex. Aur. Vict. epit. 13.

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" wiſh Emperors to behave to him, were he in a private ſta-
" tion [136]."

" Two grand qualities," ſays an hiſtorian, " are expected in all " great princes, integrity in domeſtic life, fortitude in war, and " prudence every where." This he applies to Trajan, by obſerving that " he had ſo perfect a command over himſelf, in matters " of the higheſt moment, that he could eaſily temper one virtue " with another," ſo as to ſet off every one to the beſt advantage [137].

On his arrival in Rome Trajan inſtantly applied himſelf to a reformation of the abuſes which had crept into the government, by ſhewing favor to perſons of virtue and merit; by granting various immunities to the cities of Italy; and by contributing liberally to the education of their youth [138]. Immediately upon his inauguration, he took a moſt ſolemn oath in preſence of the ſenate, that he would make the laws the rule of his government; and publicly declared, that the prince was not above the law, but the law above the prince [139]. All theſe profeſſions he amply fulfilled, by a ſtrict and perſonal attention to the diſtribution of juſtice [140]; by

[136] " Inter alia dicta hoc illius fertur " egregium: amicis enim culpantibus, quod " nimis circa omnes comis eſſet, reſpondit: " *Talem ſe Imperatorem eſſe privatis, quales* " *eſſe ſibi Imperatores privatus optaſſet.*" Eutrop. 8. 2.

[137] " Cum duo ſint, quæ ab egregiis prin-" cipibus expectentur, *Sanctitas domi, in* " *armis fortitudo, utrobique prudentia*; tantus " erat in eo maximarum rerum modus, ut " quaſi temperamento quodam virtutes miſ-" cuiſſe videretur." Sex. Aur. Vict. epit. 13. " Inuſitatæ civilitatis et fortitudinis " fuit." Eutrop. 8. 2.

[138] Εις την Ῥωμην εσηλθων, πολλα εποιει προς τε διορθωσιν των κοινων, και προς χαριν των αγαθων· ικεινων τε διαφεροντως επιμελουμενος, ὡς και ταις πολεσι ταις εν Ιταλια προς την των παιδων τροφην πολλα χαρισασθαι, και τοιουτους ενεργετων. Dio Caſſ. 68. 5. " Multas immunitates civitati-" bus tribuens." Eutrop. 8. 2.

[139] " Sedens præbuit jusjurandum, et ille " juravit, expreſſit, explanavitque verba, " quibus caput ſuum, domum ſuam, ſi ſci-" enter fefelliſſet, deorum iræ conſecraret." Plin. Pan. 64. And again, " In roſtris " quoque ſimili religione ipſe te legibus " ſubjeciſti: legibus, Cæſar, quas nemo " principi ſcripſit. Sed tu nihil amplius " vis tibi licere, quam nobis: ſic fit, ut nos " tibi plus velimus. Quod ego nunc pri-" mum audio, nunc primum diſco; non eſt " princeps ſupra leges, ſed leges ſupra prin-" cipem." Ib. 65.

[140] Ου μεντοι δια πολεμικος ανηρ, τ' αλλα ητλον διηγεν, η και ητλον εδικαζεν, αλλα τοτε μεν εν τη αγορα του Αυγουστου, τοτε δ' εν τη τοφ τη Διονϊφ ονομασμενη, πολλακις δε και αλλοθι εκρινεν επι βηματος. Dio Caſſ. 68. 10.

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a ſcrupulous obſervance of the laws already in being; and by improving them, where defective, by the addition of others, in matters both of policy and religion[141]: and ſo conſcious did he appear of the purity of his own intention, that on the delivery of the ſword to his greateſt officer of ſtate, as the uſual token of power, he added the following admonition; "This I deliver you to uſe in my defence, "if I act uprightly; if otherwiſe, againſt me: for the errors of a "ſovereign are of all others the leaſt excuſable[142]."

Virtues of this active and popular kind eaſily communicated themſelves to his royal conſort; who, on her approach to the palace, made this conciſe, but cordial, addreſs to the admiring multitude; "Thus do I enter, as I would wiſh to retire:" and ſhe, in fact, conducted herſelf throughout with ſuch exemplary prudence, modeſty, and affability, as to put the tongue of calumny to utter ſilence[143]. Where is the Briton, who can contemplate ſo uncommon a pattern of female excellence, and be at a loſs for a parallel?

[141] "Juſtitiæ vero, ac juris humani divinique, tam repertor novi, quam inveterati cuſtos." Sex. Aur. Vict. epit. 13.

[142] "Uſque eo innocentiæ fidens, uti præfectum Prætorio Saburanum nomine, cum "inſigne poteſtatis, uti mos erat, pugionem "daret, crebro monuerit: *Tibi ipſum ad "munimentum mei committo, ſi recte agam: "ſin aliter, in me magis: quod moderatorem omnium vel errare minus fas ſit.*" Sex. Aur. Vict. de Cæſ. 13. Λαβε τυτο το ξιφος, ισα, αν μεν καλως αρχω, ὑπερ εμου, αν δε κακως, κατ' εμου αυτῳ χρησθ. Dio Caſſ. 68. 16.

[143] Πλωτινα δε γυνη αυτου, ὁτι πρωτον ες το παλατιον ισηει, επι τους ασπασμους και προς το πληθος μιλιαραφησα ειπε, "Τοσαυτη μοι ενταυθα "εισιεχομαι, ὁσα και εξιεναι βουλομαι." και ὁντως γε ἑαυτην δια πασης της αρχης ἀνηγαγεν, ὡστε μηδεμιαν επηγοριαν σχειν. Dio Caſſ. 68. 5. To this may be properly added the following compliments: "Tibi uxor in decus et gloriam cedit. Quid enim illa ſanctius? "quid antiquius?—Quam illa nihil ſibi ex "fortuna tua, niſi gaudium vindicat? "Quam conſtanter non potentiam tuam, "ſed ipſum te reveretur? Idem eſtis invicem quod fuiſtis, probatis ex æquo: nihilque vobis felicitas addidit, niſi quod "ſcire cæpiſtis, quam bene uterque veſtrum "felicitatem ferat. Eadem quam modica "cultu? Quam parca comitatu? Quam "civilis inceſſu? *Mariti* hoc opus, qui ita "imbuit, ita inſtituit. Nam uxori ſufficit "obſequii gloria. An cum videat quam te "nullus terror, nulla comitatur ambitio; "non et ipſa cum ſilentio incedat, ingredientemque pedibus maritum, in quantum "patitur ſexus, imitetur? Decuerit hoc illam, etiam ſi diverſa tu facias. Sub hac "vero modeſtia viri, quantam debet verecundiam uxor marito? fœmina ſibi?" Plin. Pan. 83.

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It ſhould ſeem likewiſe, that ſome part of the antient rights of the "comitia" were now reſtored; becauſe we find Trajan appearing in the Forum, as a candidate for his third conſulſhip, and conforming to ſeveral of the ceremonies uſually obſerved in the days of the republic[144]. What particular ſhare of conſtitutional liberty the people recovered does not appear; but nothing can be a more certain criterion of the general mildneſs of this reign, than that every perſon was permitted to think for himſelf, and to publiſh his ſentiments to the world[145].

His elegant panegyriſt lays a particular ſtreſs upon the importance of the privilege which the age then enjoyed, of paſſing free cenſures upon the conduct of tyrants, which can only be done under a good prince, and which, indeed, is the ſureſt teſt of his goodneſs: for when ſucceeding times are ſilent concerning a bad prince, it is a manifeſt ſign that the reigning one is no better[146]. How happy would it be, if we of this free country, who are, perhaps, the only people upon earth capable of feeling the real benefit of ſuch a privilege, were as temperate in the uſe, as we are ſecure in the poſſeſſion,

[144] "Comitiis tuis interfuiſti, candidatus "non conſulatûs tantum, ſed immortalitatis, et gloriæ, et exempli, quod ſequerentur boni principes, mali minarentur. "Vidit te populus Romanus in illa vetere "poteſtatis ſuæ ſede: perpeſſus es longum "illud carmen comitiorum, nec jam irridendam moram: conſulque ſic factus es, "ut unus ex nobis, quos facis conſules." Plin. Pan. 63.

[145] "Rara temporum felicitate, ubi ſentire "quæ velis, et quæ ſentias dicere licet." Tac. Hiſt. 1. 1.

[146] This paſſage therefore ought always to be remembered by every true friend of political liberty; "Quare ego te, Cæſar, munere ribus omnibus tuis, omnibus comparo; multis antepono: quod licet nobis et in præteritum de malis imperatoribus quotidie "vindicari, et futuros ſub exemplo præmonere, nullum locum, nullum eſſe tempus, "quo funeſtorum principum manes, a poſteriorum execrationibus conquieſcant. Quo "conſtantius, P. C. et dolores noſtros et "gaudia proferamus; lætemur his quibus "fruimur; ingemiſcamus illis quæ patiebamur. Simul utrumque faciendum eſt "ſub bono principe. Hoc ſecreta noſtra, "hoc ſermones, hoc ipſæ gratiarum actiones "agant; meminerintque ſic maxime laudari "incolumem imperatorem, ſi priores ſecus "meriti reprehendantur. Nam cum de "malo principe poſteri tacent, manifeſtum "eſt eadem facere præſentem." Plin. Pan. 53.

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of it; and that, while we indulge ourſelves, at pleaſure, in expoſing the vices of deceaſed monarchs, we did equal juſtice to the virtues of a living one; who has adorned the morality of the beſt of pagans, with the piety of the beſt of chriſtians.

Trajan, though deficient in the more elegant and ornamental parts of a liberal education, ſuch eſpecially as were neceſſary to form the complete orator, a character always held in the higheſt degree of reverence among the Romans, was a competent maſter of the general topics of ſolid and uſeful learning, and was highly ſenſible of its importance to a great and mighty people[147]; he therefore cheriſhed and rewarded the profeſſors, and eſtabliſhed public libraries for its promotion and encouragement[148]. In the true ſpirit of princely generoſity he, likewiſe, improved and decorated ſundry provinces of the empire with high-roads, ports, and other public works and edifices, equally conducive both to beauty and convenience; and all this without any wanton waſte of the blood of his ſubjects[149]. Many of theſe remain even at this day, and will be laſting monuments of his taſte and magnificence[150].

Though inſpired with an ardent paſſion for war, he contented himſelf with the glory of the day, and carefully prevented thoſe

[147] "Magis ſimpliciora ingenia aut eru-
"ditiſſimos, quamvis ipſe parcæ eſſet ſcien-
"tiæ, moderateque eloquens, diligebat." Sex. Aur. Vict. epit. 13. Παιδειας μεν ακριβους, ὁση εν λογοις, ου μετεσχε· το γε μην εργον αυτης και ηπιστατο και εποιει. Dio Caſſ. 68. 7.

[148] Κατεσκευασε δε και βιβλιων αποθηκας. Id. 68. 16.

[149] "Orbem terrarum ædificans." Eutrop. 8. 2. Και εδαπανα παμπολλα μεν ες τους πολεμους, παμπολλα δε ες τα της ειρηνης εργα· και πλειστα, και αναγκαιοταλα και εν ὁδοις και εν λιμεσι και εν οικοδομημασι δημοσιοις καλασκευασας, ουδενος αιμα ες ουδεν αυτων αναλωσεν. ὁυτω γαρ που και μεγαλοφρων και μεγαλογνωμων ην, ὡστε και τω ἱπποδρομῳ επιγραψαι, ὁτι εξαρκουντα αυτον τα των Ρωμαιων δημῳ εποιησεν, επειδη διαφθαρηναι τε, και μειζω και περικαλλεστερον εξεργασαλο. Dio Caſſ. 68. 7. "Datur intueri pulcherrimas ædes,
"deterſo ſitu, auctas ac vigentes. Magnum
"hoc tuum non erga homines modo, ſed
"erga tecta ipſa meritum, ſiſtere ruinas,
"ſolitudinem pellere, ingentia opera eodem
"quo exſtructa ſunt animo, ab interitu vin-
"dicare." Plin. Pan. 50.

[150] Εςησεν εν τη αγορᾳ και κιονα μεγιςον, ἁμα μεν ες ταφην ἑαυτῳ, ἁμα δε εις επιδειξιν του καλα την αγοραν εργου. παλος γαρ του χωριου εκεινου ὁσος, κατεσκαψε τοσουτον ὁσον ὁ κιων ανεσχει, και την αγοραν εκ τουτου πεδινην καλεσκευασε. Dio Caſſ. 68. 16.

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fatal and bloody conſequences, into which a fierce and impetuous ſoldiery are too often precipitated by the inſolence of victory. This procured him the eſteem of his very enemies[151]; inſomuch that his illuſtrious adverſary, Decebalus, began now to tremble for his liberty, conſcious that, though he had once conquered Domitian, the Roman people were yet invincible: a people, whom he had now to encounter, with Trajan at their head, who was more irreſiſtible for his juſtice, fortitude, and integrity of manners[152], than even for his knowledge in the arts of war.

The empire, which Auguſtus[153] and his ſucceſſors were contented to ſecure, rather than to enlarge, was extended by Trajan to the utmoſt limits it ever reached[154]. But this circumſtance, when weighed in the balance of ſound and rational policy, will, perhaps, appear more honorable to the prince, than beneficial to the ſtate. It is no wonder, indeed, that the luſtre of conqueſt ſhould impoſe upon the imaginations of a vain and high-ſpirited people, who thought the world was made for no other purpoſe, than to crouch under the wings of the Roman eagle: but it is equally true, that a ſovereign, who is daily ſtriving to acquire more than he can defend, is only treaſuring up future loſſes, and multiplying the cauſes of diſappointment and humiliation. Theſe conſequences are too obvious to require any particular illuſtration; and were fully verified by the ſubſequent hiſtory of this mighty empire, which

[151] Ει δε και φιλοπολεμος ην, αλλα τη τε καλοκαγαθωσει, και του εχθιστου μεν καθαιρησει, του οικειου δε αυξησει ηρκειτο. ουδε γαρ ουδ' οπερ εωθεν εν τοις τοιουτοις γιγνεσθαι, το τους στρατιωτας εξογκουσθαι τε και υπερφρονειν, συνεβη πολε επ' αυτου· ουτως εγκρατως αυτων ηρχε. δια ταυτα μεν ουν ουκ απεικοτως ο Δεκεβαλος αυτον εδεδιει. Dio Caſſ. 68. 7.

[152] Πυθομενος δε ο Δεκεβαλος την ορμην αυτου, εφοβηθη· ατε και ευ ειδως, οτι προτερον μεν ου Ρωμαιους, αλλα Δομιτιανον επεπληκει, τοτε δε ως προς τε Ρωμαιους και προς Τραϊανον αυτοκρατορα πολεμησοι. πλειον γαρ επι τε δικαιοτητι, και επ' ανδρια, τη τε απλοτητι των ηθων διεφερε. Dio Caſſ. 68. 6. "Gloriam militarem civilitate "et moderatione ſuperavit." Eutrop. 8. 2.

[153] P. 229.

[154] "Romani imperii, quod poſt Auguſtum "defenſum magis fuerat, quam nobiliter "ampliatum, fines longe lateque diffudit." Eutrop. 8. 2. "Primus aut ſolus etiam "vires Romanas trans Iſtrum propagavit." Sex. Aur. Vict. de Cæſ. 13.

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from henceforward began gradually to conſume in its own ſtrength, till it expired in a dream; leaving no other traces behind, than the bare memory of its former exiſtence; to operate as an inſtructive leſſon to future ages; and to ſhew of what little eſtimation the higheſt point of human grandeur appears in the ſight of God; who "caſteth out the counſels of princes" at his pleaſure; and blaſts the ambitious deſigns of the haughty conquerors and tyrants of the univerſe, with the breath of his mouth.

But ſuch reflexions did not ſtrike the minds of the writers of that age, who did not look into futurity; and who being equally affected by the brilliant ſallies of martial heroiſm, and the patriotic, though leſs ſplendid, efforts of political prudence, have ſpoken of this prince in ſuch exalted ſtrains, as if his virtues excelled the ordinary powers of deſcription [155]. Such eulogies are certainly too highly touched by the intereſted flatterers of his own times; though they may likewiſe be aſcribed, in part, to the quick feelings of the people in general, now happily reſtored to a ſtate of liberty and tranquillity; which induced them to look up to the reigning prince, as a divinity ſent from heaven to redeem them from their oppreſſions [156]. However, if the teſtimony of leſs partial poſterity be of any weight, they were not void of good foundation.

It is a natural and becoming wiſh, that the examples of worthy princes ſhould produce a juſt effect upon the minds of their ſucceſſors.

[155] See that highly finiſhed piece of adulation, ſo well known under the title of "*C. Plinii panegyricus Trajano dictus*," from which all ſubſequent writers have chiefly borrowed their ideas of this celebrated Emperor. "Iſte talem ſe reipublicæ præbuit, "qualem vix ægreque exprimere valuerunt "ſummorum ſcriptorum miranda ingenia." Sex. Aur. Vict. epit. 13. "Rempublicam "ita adminiſtravit, ut omnibus principibus "merito præferatur." Eutrop. 8. 2. Τα τε αλλα δε ενψηφιζετο τω Τραϊανω πολλα ἡ βουλη, και Οπτιμον, επ' ουν αριστον επονομασεν. Dio Caſſ. 68. 23.

[156] "Quæ omnia eo majora viſebantur, "quo per multos atque atroces tyrannos "perdito atque proſtrato ſtatu Romano, in "remedium tantorum malorum divinitus "credebatur opportune datus: uſque eo, "ut adveniens imperium ejus pleraque mi-"rificia denuntiaverint." Sex. Aur. Vict. epit. 13.

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When, therefore, any future generations, who cannot be ſuſpected of flattery, voluntarily hold up ſuch illuſtrious characters as patterns of imitation, they bear the moſt unequivocal teſtimony poſſible to their real merit. Thus it happened with regard to the ſubject of our preſent contemplation; whoſe virtues had made ſuch a deep impreſſion upon the minds of the Romans for ſeveral ſucceeding centuries, that, upon the acceſſion of every new Emperor, it was made a neceſſary part in the congratulatory addreſs of the ſenate, that he might be *happier than Auguſtus, and better than Trajan*[157].

It muſt ſtill, however, be confeſſed, that this paragon of princely excellence has been charged with ſeveral groſs and ſenſual vices, which even the looſe and diſſolute morals of paganiſm dare not juſtify; though the too great frequency of ſuch infamous practices, and the pretence of their not affecting his political conduct, have been urged in their mitigation[158]. It is true likewiſe, that, notwithſtanding the fatherly tenderneſs which he profeſſed for *all* his ſubjects, he ſometimes withdrew it from the moſt virtuous and deſerving part of them; ſuffering them to be expoſed to the moſt unjuſt and inhuman perſecutions, for no other crime, than a courageous adherence in their duty to their divine maſter.

The ſame barbarities, when exerciſed by Nero and Domitian, did but aggravate their general guilt, and increaſe the catalogue of thoſe indiſcriminate acts of tyranny, with which thoſe ſcourges

[157] "Hujus tantum memoriæ delatum eſt, "ut uſque ad noſtram ætatem non aliter "in ſenatu principibus acclametur, niſi *feli-* "*cior Auguſto, melior Trajano.* Adeo in eo "gloria bonitatis obtinuit, ut vel aſſen-"tantibus, vel vere laudantibus, occaſione "magnificentiſſimi præſtet exempli." Eutrop. 8. 2. This author finiſhed his hiſtory with the reign of Jovian, A. D. 364, at the diſtance of two centuries and a half from the age of Trajan.

[158] "Quin etiam vinolentiam, quo vitio, uti Nerva, angebatur, prudentia molliverat; "curari vetans juſſa poſt longiores epulas." Sex. Aur. Vict. de Cæſ. 13. "Cibo vino-"que paululum deditus erat." Id. epit. 13. Οὐδὲ μὲν ὅτι καὶ περὶ μειρακια καὶ περὶ οἶνον ἐσπου-δακει· ἀλλ', εἰ μὲν τι ἐκ τουτων ἡ αἰσχρον ἡ κακοι ἡ ἐδιδρακει ἡ ἐπεποιθει, ἐπηγοριαν ἂν εἰχε· νυν δὲ του τι οἰου διακορως ἐπιεις, καὶ ψηφων ἡν, ἐι τι τοις παι-δικοις οὐδενα ἐλυπησεν. Dio Caſſ. 68. 7.

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of mankind infeſted all ſuch as had the misfortune to come within the reach of their power. But, when capriciouſly inflicted by the arm of a prince, who affected to conduct himſelf by the rules of univerſal clemency, and to extend an equal protection to his ſubjects of every ſect and denomination, they fell with redoubled weight upon the heads of the innocent victims; and appeared, in the eyes of all true friends of humanity, with tenfold horror and injuſtice. The undiſtinguiſhed ſeverities of a bloody taſk-maſter, though ſenſibly felt, and bitterly lamented, by thoſe who bear them, are ſomewhat alleviated by the number of fellow-ſufferers: but the harſh and unprovoked correction of a once-affectionate parent cuts with a much keener edge, and imprints a wound more piercing and afflictive, as coming from a hand by which they had before been nurtured and cheriſhed.

From theſe unnatural acts of barbarity, committed by a prince, who was, otherwiſe, one of the beſt that ever graced the throne of Rome, may be deduced this important truth, that unlimited toleration is not eaſily reconcilable with the contracted and groveling ſpirit of polytheiſm.

Of the myriads of deities with which ſuperſtition and idolatry had peopled the pagan heavens, none were ſuppoſed infinitely omnipotent; each had his particular rank aſſigned in the celeſtial ſenate; each was confined to his particular province and function; each, in his turn, was intitled to his ſhare of adoration; conſequently, there was little room for jealouſy and emulation among thoſe, who were alike worſhippers of all. Theſe fictitious gods being, likewiſe, confeſſedly defiled with the worſt of vices, it was not the intereſt of a people, then led aſtray by the deluſions of the prince of darkneſs, to diſpute that authority, under which they enjoyed an unbounded liberty of revelling in the groſſeſt ſenſualities. But this mutuality of toleration, which the polytheiſts had abundant inducements to allow to

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each other, could not, by any parity of reaſon, be applied to the *One God* of the Chriſtians, who would bear no equal, and who was "of purer eyes than to behold iniquity." An additional impediment to this indulgence aroſe from the faſhion, adopted by ſeveral of the princes, even while on earth, of becoming themſelves candidates for the godhead; and therefore not likely to reliſh the idea of an all-perfect, ſpiritual, and almighty Being; who, if they had admitted him to exiſt at all, they were bound to acknowledge, would have inſtantly ſuperſeded and annihilated their own viſionary and uſurped divinity.

Hiſtory, indeed, has preſerved the memory of ſome immunities, occaſionally extended to the Chriſtians by Adrian and Antonine; and of edicts promulged by them, to reſtrain the cruelties to which that virtuous and innocent ſect had been long expoſed. But theſe inſtances of commiſeration and clemency were no more than ſo many ſpecial ſuſpenſions of thoſe bloody practices, which theſe very Emperors, excellent as they otherwiſe were, too frequently promoted[159]. So far from being any teſts of the gentle and forbearing temper of the popular religion then prevailing, they amount to the cleareſt demonſtration, that a malevolent ſpirit of perſecution and intolerance pervaded the Roman nation at large; and that religious liberty conſtituted no avowed part of the ſyſtem of paganiſm; how artfully ſoever its cauſe may have been defended by the wit and ingenuity of its modern advocates.

Hadrian, A. D. 117.

Trajan ſeems to have purpoſely avoided the nomination of a ſucceſſor; though his reaſons for ſo doing cannot eaſily be diſcovered.

[159] Ὁ γαρ Αντωνινος ὁμολογεῖσθαι παρα παντων καλος τε και αγαθος γενεσθαι, και ουτε των αλλων υπηκοων τισι βαρυς, ουτε Χριστιανοις επαχθης, αλλα πολλην τινα τουτοις νεμων αιδω, και τη του Ἀδριανου τιμη, ἡν εκεινος ετιμα Χριστιανους, προστιθεις. ὁ γαρ του Παμφιλου Ευσεβιος και επιστολας τινας του Ἀδριανου εν τη εκκλησιαστικη αὐτου ἱστορια παρατιθεται, εν αἰς εκεινος δεικνυται τοις λυτουσι τι η κατηγορουσι των Χριστιανων δικα απειλων, και των Ἡρακλεια ιπομνυμενος ὡς τευξοιτο τιμωριας. Xiph. in Dio. 70. 3.

3 Having

Having never explicitly declared his ſentiments upon that nice ſubject, it gave occaſion to a variety of conjectures; ſome being of opinion that he meant to imitate the example of Alexander, and to die without any certain ſucceſſor at all; others, that his deſign was to ſend a meſſage to the ſenate, requeſting them to take the appointment upon themſelves, only limiting their choice to the beſt of thoſe whom he ſhould name for that purpoſe [160]. It might indeed have been expected, that, as he had no iſſue of his own, a natural partiality would have induced him to give a preference to Hadrian, his fellow-citizen and near relation; whom he had educated as his child, and had diſtinguiſhed by many peculiar inſtances of perſonal eſteem, as well as by many honorable employments, both civil and military. But it is moſt probable, that, knowing the irregularity of his character, he was fearful of committing the complicated concerns of ſo vaſt an empire to a governor, in whoſe ſteadineſs he could not repoſe an entire confidence [161]; and that this ſtruggle between private affection and public duty was the true cauſe of his indetermination.

The Emperor, however, having ended his days at a great diſtance from the capital, Plotina, who entered warmly into the intereſts of Hadrian, concealed the death of her huſband for ſome days, while ſhe counterfeited letters of adoption; and, by an act of authority, which ſhe had never before aſſumed in any matter of ſo public a nature, tranſmitted them to the ſenate, not ſigned by Trajan's hand, but by her own. On the receipt of theſe Hadrian was immediately proclaimed Cæſar and Emperor; and appearing at once

[160] "Multi quidem dicunt, Trajanum in "animo id habuiſſe, ut, exemplo Alexandri "Macedonis, ſine certo ſucceſſore morire-"tur: multi, ad ſenatum eum orationem "voluiſſe mittere, petiturum, *ut, ſi quid "ei eveniſſet, principem Romanæ reipublicæ "ſenatus daret*; additis duntaxat nominibus, "ex quibus *optimum* idem ſenatus eligeret." Spart. in Hadr. 4.

[161] Ἁδριανος δε, ὑπο μεν Τραϊανου ουκ ισποιηθη. ην μεν γαρ πολιτης αυτου, και επιτροπευθη ὑπ' αυτου, γενους δ' ὁι εκοινωνει, και αδελφιδης αυτου ηγγαμηκει. το, τε συμπαν, συνην αυτῳ και συνεστρατευετο, τη τε Συρια επι τῳ Παρθικῳ πολεμῳ προσεταχθη. ου μεντοι συτ' αλλο τι εξαιρετον παρ' αὐτου ελαβεν, ουθ' ὑπατος εν πρωτοις εγενετο. Dio Caſſ. 69. 1.

at

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at the head of a powerful army, entirely prevented all further competition [162].

Thus ſecured, his firſt buſineſs was to obtain the approbation of the ſenate, which he effected by a conciliatory epiſtle, wherein he humbly ſolicited their confirmation of his appointment; and, as a flattering inſtance of his moderation, diſclaimed all thoſe honors which had been uſually decreed to his predeceſſors on their acceſſion; declaring that he would accept of none, but ſuch as they ſhould hereafter pleaſe to grant at his own petition [163]. Theſe were followed in due time with other very ſolemn aſſurances, that he would make the public good the ſole meaſure of his actions [164]; that he would in all things pay the utmoſt deference to their ſentiments, and would deprive none of their lives, but under a ſentence pronounced by themſelves [165]. In token of his ſincerity, during his

[162] This anecdote ſtands upon peculiarly good authority; having been delivered to the Greek hiſtorian by his own father, who was living at the time, and very high in the confidence of Hadrian. Αλλα και Καισαρα αυλον και αυτοκρατορα, του Τραϊανου απαιδος μεταλλαξαντος, ὁ, τι Ατ̃λιανος, πολιτης αυτου ων, και επιτροπος γεγονως, και ἡ Πλωτινα εξ ερωτικης φιλιας, πλησιον τε οὐα, και δυναμιν πολλην ἐχοντα, απεδειξαν. ὁ γαρ πατηρ μου Απρωνιανος, της Κιλικιας αρξας, παντα τα κατ' αυτον εμεμαθηκει σαφως· ελεγε δε τα τε αλλα ὡς ἑκαστα, και ὁτι ὁ θανατος του Τραϊανου ἡμερας τινας δια τουτο συνεκρυφθη, ἱν' ἡ ποιησις προεκφοιτησοι. εδηλωθη δε τουτο και εκ των προς την βουλην γραμματων αυτου· ταις γαρ επιστολαις ουκ αυτος, αλλ' ἡ Πλωτινα ὑπεγραψεν· ὁπερ επ' ουδενος αλλου επεποιηκει. Dio Caſſ. 69. 1. "Deſuncto Trajano, Ælius Hadrianus creatus eſt princeps; ſine aliqua quidem voluntate Trajani, ſed operam dante Plotina, Trajani uxore. Nam cum Trajanus, quanquam conſobrinæ filium, vivens noluerat adoptare." Eutr. 8. 3. The other Latin hiſtorians are not ſo clear with regard to this fact, but ſpeak of it with leſs degree of certainty than it deſerved. "His virtutibus acto imperio—morbo periit (ſc. Trajanus), grandæva ætate, adſcito prius ad imperium Hadriano cive propinquoque. —Quanquam alii Plotinæ Trajani conjugis favore imperium aſſequutum putent, quæ viri teſtamento hæredem regni inſtitutum ſimulârat." Sex. Aur. Vict. de Cæſ. 13. "Nec deſunt, qui factione Plotinæ, mortuo jam Trajano, Hadrianum in adoptionem adſcitum eſſe prodiderint; ſuppoſito, qui pro Trajano feſſa voce loqueretur." Spart. in Hadr. 4.

[163] Εγραψε δε προς την βουλην ὁ Αδριανος, αξιων βεβαιωθηναι αὐτῳ την ἡγεμονιαν και παρ' ἐκεινης, και απαγορευων μηδεν αὐτῳ μητε τοτε μητε αλλοτε τιμην δη τινα φερον (οια εωθει γιγνεσθαι) ψηφισθηναι, πλην αν τι αυτος ποτε αξιωσῃ. Dio Caſſ. 69. 2.

[164] "In concione et in ſenatu ſæpe dixit, *Ita ſe rempublicam geſturum, ut ſciret populi rem eſſe, non propriam.*" Spart. in Hadr. 8.

[165] "*In ſenatu juravit, ſe nunquam ſenatorem, niſi ex ſenatûs ſententia, puniturum.*" Id. ib. 7. Και εν επιστολῃ τινι τα τε αλλα μεγαλοφρονησαμενος, και επομοσας, μητε τι ἐξω των τῳ δημοσιῳ

his reſidence in or near Rome, he frequented their legal meetings with the ſtricteſt punctuality; and was extremely ſcrupulous about the creation of new members, that being the higheſt honor in his power to confer.

It was likewiſe the cuſtom in thoſe days, for the prince, when he choſe to preſide in the courts of juſtice, to demand the attendance both of the ſenators and knights as his grand council, by whoſe united opinion he regulated his decrees. But Hadrian would no longer ſuffer the inferior order, either in his preſence or abſence, to paſs judgment upon a ſenator; and ſeverely cenſured all former princes, who had been deficient in theſe marks of reſpect to that ſupreme body [166]. Being, however, of a very ſuſpicious and envious nature, he conceived prejudices, upon the ſlighteſt ſurmiſes, againſt thoſe whom he had formerly diſtinguiſhed by the ſtrongeſt proofs of his favor and friendſhip; and at different periods of his reign put to death many illuſtrious and worthy perſons, from a mere jealouſy of their wealth, power, and reputation [167].

His paſſion for glory and applauſe was without bounds; and the quickneſs of his parts, and vigor of his underſtanding, aided by an indefatigable induſtry, made him ſuperior to every difficulty

δημοσιῳ συμφεροντων ποιησειν, μητε βουλευτην τινα αποσφαξειν, και εξωλειαν ἑαυτῳ, ως και ὁτιουν αυτων ικβη προσιπαρασαμενος. Dio Caſſ. 69. 2.

[166] Επρατλε δε και δια του βουλευτηριου παλα τα μεγαλα και αναγκαιοταλα. Dio Caſſ. 69. 7. "Senatui legitimo, cum in urbe vel juxta "urbem eſſet, ſemper interfuit. Senatus "faſtigium in tantum extulit, difficile fa- "ciens ſenatores, ut cum Attianum ex præ- "fecto prætorii, ornamentis conſularibus "præditum, faceret ſenatorem, nihil ſe "amplius habere quod in eum conferri "poſſet, oſtenderit. Equites Romanos, nec "ſine ſe de ſenatoribus, nec ſecum judicare "permiſit. Erat enim tunc mos, ut, cum "princeps cauſas cognoſceret, et ſenatores "et equites Romanos in conſilium vocaret, "ſententiam ex omnium deliberatione pro- "ferret. Execratus eſt denique principes, "qui minus ſenatoribus detuliſſent." Spart. in Hadr. 8.

[167] "Amicos ditavit, et quidem non pe- "tentes; cum petentibus nihil non negaret. "Idem tamen facile de amicis, quicquid "inſuſurrabatur, audivit, atque ideo prope "cunctos vel amiciſſimos, vel eos quos ſum- "mis honoribus evexit, poſtea ut hoſtium "loco habuit." Spart. in Hadr. 15. Αλλ' ὁμως δια τινας φονους αριστων ανδρων, ους εν αρχῃ τε της ἡγεμονιας και προς τῃ τελευτῃ του βιου πεποιηλο, διεβληθη.——οἱ δε, εφ' ἑτεροις δη τισιν εγκλημασιν, ὁια μεγαλα δυναμενοι, και πλουτῳ και δοξῃ εν ἡκασι. Dio Caſſ. 69. 2.

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both of war and politics; conducting him with eaſe through the moſt intricate receſſes of every liberal art and ſcience, that could adorn either a prince or a private man. But theſe laudable accompliſhments were ſtill debaſed by the ſame mean ſpirit of envy, which cauſed him to hate and oppreſs all thoſe who aſpired to eminence in the ſame paths with himſelf [168]: though he continued to honour and reward all others, who did not ſtand in the way of his own ambition [169].

Having ſpoken thus freely of his imperfections, juſtice requires of us to repreſent him likewiſe on the more favorable ſide of his character; from whence it is evident, that his public virtues made ample atonement for his private failings; and that in point of military ſkill, political knowledge, and active zeal for the glory and welfare of his country, he had few equals, and no ſuperior. The undefined extent, to which the empire had been increaſed by the prowefs of Trajan, ſerved only to exhauſt its internal ſtrength, and make the defence of the whole much more precarious. Hadrian, therefore, very prudently fixed the eaſtern boundary at the Tigris and Euphrates; relinquiſhing to their native maſters all the half-conquered regions beyond thoſe rivers, upon the ſame wiſe principle that Cato formerly pronounced the Macedonians free, becauſe it was not then in the power of Rome to hold them in ſub-

[168] Φιλοτιμια απληγῳ εχρητο, και κατα τουτο και τ'αλλα παντα και τα βραχυτατα επετηδευε. και γαρ επλασσε και εγραφε, και ουδεν ὁ, τι ουκ ειρηνικον και πολεμικον, και βασιλικον και ιδιωτικον ειδεναι ελεγεν. και τουτο μεν ουδεν που τους ανθρωπους εβλαπτεν. ὁ δε δη φθονος αυτου δεινοτατος ες παντας τους τινι προεχοντας ων, πολλους μεν καθειλε, συχνους δε και απωλεσε. βουλομενος γαρ παιζων εν πασι περιειναι, εμισει τους εν τινι ὑπεραιροντας. Dio Caſſ. 69. 3. "Athenienſium ſtudia moreſque "haufit." Sex. Aur. Vict. ep. 14. "Fuit "poematum et literarum omnium ſtudioſiſ- "ſimus; arithmeticæ, geometriæ, picturæ "peritiſſimus." Spart. in Hadr. 14. "Profeſſores omnium artium ſemper, ut doctior, "riſit, contempſit, obtrivit." Id. 15.

[169] "Quamvis eſſet in reprehendendis muſicis, tragicis, comicis, grammariis, rhetoribus, oratoribus, facilis; tamen omnes profeſſores et honoravit, et divites fecit: licet eos queſtionibus ſemper agitaverit.—Doctores, qui profeſſioni ſuæ inhabiles videbantur, ditatos honoratoſque a profeſſione dimiſit." Spart. in Hadr. 16.

jection.

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jection[170]. Having thus ſecured the outſkirts, he was no leſs careful to preſerve the remainder in peace[171]. For this purpoſe, being bleſſed with an uncommon activity of body, he traverſed every part of his dominions on foot, eſtabliſhing throughout a ſtrict military diſcipline, but treating all the ſubject or dependent nations with ſignal humanity and generoſity; rectifying many abuſes and defects in their conſtitutions; and protecting their frontiers by ſtrong barriers; among which this iſland was not forgotten, as appears from many noble remains ſtill bearing his name[172].

170 "Adeptus imperium, ad priſcum ſe "ſtatim morem inſtituit; et tenendæ per "orbem terrarum paci operam intendit. "Nam deficientibus his nationibus quas "Trajanus ſubegerat, Mauri laceſſebant, "Sarmatæ bellum inferebant, Britanni teneri "ſub Romana ditione non poterant, Ægyptus "ſeditionibus urgebatur, Lycia denique ac "Palæſtina rebelles animos efferebant. "Quare omnia trans Euphratem ac Tigrim "reliquit, *exemplo*, ut dicebat, *Catonis, qui "Macedonas liberos pronuntiavit, quia tene-"ri non poterant.*" Spart. in Hadr. 5. And again, "Inter hæc tamen et multas provin-"cias a Trajano acquiſitas reliquit." Id. 9. There is one author, however, who has very injudiciouſly aſcribed this act of prudence to mere envy of the glory of Trajan; "Tra-"jani gloriæ invidens, ſtatim provincias "tres reliquit, quas Trajanus addiderat; et "de Aſſyria, Meſopotamia, et Armenia, "revocavit exercitus; ac finem imperii eſſe "voluit Euphratem." Eutr. 8. 3.

171 Pacis magis quam belli cupidus." Spart. in Hadr. 10. "Pacem omni imperii "ſui tempore habuit, ſemel tantum per "præſidem dimicavit." Eutr. 8. 3. Μητε τινα πολεμον παραξαι, και τους οπλας παυσαι. Dio Caſſ. 69. 5.

172 "Immenſi laboris, quippe qui pro-"vincias omnes pedibus circumierit, agmen "comitantium prævertens, cum oppida uni-"verſa reſtitueret, augeret ordinibus." Sex. Aur. Vict. 14. "Orbem Romanum "circumivit, et multa ædificavit." Eutr. 8. 3. "Circumiens provincias, procuratores "et præſides pro factis ſupplicia affecit: ita "ſevere, ut accuſatores per ſe crederetur "immittere." Spart. in Hadr. 13. "Mi-"litem, quaſi bellum immineret, exercuit." —"Labantem diſciplinam, incuria ſupe-"riorum principum, retinuit." Id. ib. 10. "Converſis regio more militibus, Britan-"niam petiit: in qua multa correxit, mu-"rumque per octoginta millia paſſuum "primum duxit, qui barbaros Romanoſque "divideret." Id. ib. 11. Τα γραμματικα ακριβεσταλα ησκησεν, ως ισχυοντα μητ' απειθειν, μητε ὑβριζειν· και τας πολεις τας τε συμμαχιδας και τας ὑπηκοους μεγαλοπρεπεσταλα ωφελησε. πολλας μεν γαρ και ειδεν αυτων, ὁσας ουδεις αλλος αυτοκρατωρ, πασας δε ως εικος επεκουρησε, ταις μεν ὑδωρ, ταις δε λιμενας, σιτον τε και εργα, και χρηματα, και τιμας αλλαις αλλας διδους. Dio Caſſ. 69. 5. See alſo c. 9. where the hiſtorian enlarges ſtill more upon theſe exploits, and adds, Ουτω και τω εργω και τοις παραγγελμασι παν το γραμματικον δι' ὁλης της αρχης ησκησε και κατεκοσμησεν, ὡστε και νυν τα τοτε ὑπ' αυτου αχθεντα, νομον σφισι της γραμματικης ειναι· και δια τουτο και μαλιστα, εν ειρηνη το πλειστον προς τους αλλοφυλους διεγενετο.

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Though he ſignalized his own character by divers acts of clemency, it was certainly not the general turn of his diſpoſition; as the common people were oftener the objects of his ſeverity than of his kindneſs [173]. He made amends, however, by ſeveral inſtances of true generoſity; particularly by remitting vaſt debts due to the exchequer; by burning the ſecurities which had been given to Trajan; and likewiſe by renouncing any perſonal claim to forfeitures on the condemnation of criminals, all which he commanded to be brought into the public treaſury [174]. But he is moſt of all to be commended for his diligent and upright diſpenſation of juſtice; which he frequently adminiſtered in the public courts in his own perſon, aſſiſted by the conſuls, prætors, and other aſſeſſors, ſelected from among the wiſeſt of the ſenators [175], and ſome of the ableſt profeſſors of the law [176], whoſe names have been tranſmitted to poſterity with the higheſt honor. To check, likewiſe, the oſtentatious pomp and extravagance of the judges, which were ſtrong temptations to corruption, he reſtrained their expences, and reduced them all to the antient ſtandard [177].

[173] "Non magnam clementiæ gloriam "habuit." Eutr. 8. 3. Ηγε δε και τον δημον των Ρωμαιων εμβριθως μαλλον, η θωπευτικως. Dio Caſſ. 69. 6.

[174] "Ad colligendam autem gratiam nihil prætermittens, infinitam pecuniam, "quæ fiſco debebatur, privatis debitoribus "in urbe atque Italia, in provinciis vero, "etiam ex reliquis ingentes ſummas remiſit; "ſyngraphis in foro divi Trajani, quo magis ſecuritas omnibus roboraretur, incenſis. "Damnatorum bona in fiſcum privatum "redigi vetuit, omni ſumma in ærarii publico recepta." Spart. in Hadr. 7.

[175] "Cauſas Romæ atque in provinciis "frequenter audivit; adhibitis conſilio ſuo "conſulibus atque prætoribus et optimis "ſenatoribus." Id. ib. 22. Εδικαζε μετα των πρωτων, τοτε μεν εν τω παλατιω, τοτε δε εν τη αγορα, τω τε Παυθειω, και αλλοθι πολλαχοθι, απο βηματος, ωστε δημοσιευεσθαι τα γιγνομενα. και τοις ὑπαιθροις εστιν ὁτε δικαζουσι συνεγιγνετο· εν τε ταις ἱπποδρομιαις αυλους ετιμα. Dio Caſſ. 69. 7.

[176] "Cum judicaret, in conſilio habuit "non amicos ſuos, aut comites ſolum, ſed "juriſconſultos, et præcipue Julium Celſum, Salvium Julianum, Neratium Priſcum, alioſque: quos tamen ſenatus omnes "probaſſet." Spart. in Hadr. 18.

[177] "Judicum ſumptus conſtituit, et ad "antiquum morem redegit." Spart. in Hadr. 22.

CHAP. V.

No prince was more attentive, than himſelf, to the regulation of the internal police, both civil and military; all which he ſettled upon ſo firm and uſeful a baſis, that the offices by him eſtabliſhed continued, with little variation, through ſeveral ſucceeding centuries [178]. The new laws, enacted under his ſpecial authority, were numerous, liberal, and beneficial [179]. But he has derived ſtill greater honor from his undertaking to digeſt and methodize the antient laws, the confuſed ſtate of which had been an evil long viſible to every perſon of penetration; though the diſtractions of former times had hitherto baffled all endeavours to effect a complete reformation. In this important work he engaged with a truly patriotic ardor and aſſiduity; but lived to finiſh no more than the *Perpetual Edict*, the nature whereof will be explained more at large upon a future occaſion. This, however, though but a ſmall part of the whole, was of infinite ſervice to the civil conſtitution; as it ſuggeſted many ſimilar attempts to ſucceeding princes; and ſerved for the foundation of that celebrated collection, which Juſtinian more happily accompliſhed.

Upon the whole, though the inconſtancy of his temper [180] deſtroyed much of the merit of his good actions, and rendered him leſs amiable, as a private member of ſociety; yet his unwearied ſolicitude for the glory and intereſt of the Roman empire; his moderation and prudence in the exerciſe of his authority; and the felicity which his ſubjects actually enjoyed under his government, certainly entitle him, with all due allowances for human frailties, to the character of a reſpectable and uſeful magiſtrate.

[178] "Officia ſane publica, et palatina, nec "non militiæ in eam formam ſtatuit, quæ "paucis per Conſtantinum immutatis hodie "perſeverat." Sex. Aur. Vict. ep. 14.

[179] Some of the chief of them are enumerated by Spart. in Hadr. 18.

[180] "Varius, multiplex, multiformis." Sex. Aur. Vict. ep. 14.

Hadrian

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Hadrian had adopted Ælius Verus for his ſon and ſucceſſor [181]; who not long ſurviving his nomination, the dying prince ſummoned the chiefs of the ſenate to attend him; and having with great ſerenity informed them of his loſs, told them he had now fixed upon another Emperor, whom he could ſafely propoſe to them, as an eminent pattern of benignity and prudence: one, whoſe mind was not liable to be led aſtray by the impetuoſity of youth, nor to grow torpid from the infirmities of old age: who had been educated in a ſtrict courſe of obedience to the laws of his country; and who, from the manner in which he had already acquitted himſelf in the execution of the higheſt offices of ſtate, had diſplayed a conſummate knowledge of the forms and principles of the antient conſtitution; and had afforded the ſtrongeſt reaſon to believe, that he would continue to govern the empire with equal wiſdom and integrity. He then named Titus Antoninus Fulvius Boionius, though with ſome degree of apprehenſion, that he would with difficulty be perſuaded to accept the offer [182].

Antoninus Pius, A. D. 138.

This prince is better known to poſterity by the name of Antoninus Pius; a title which he derived from a variety of honorable cauſes, but principally from the extraordinary benevolence of his diſpoſition [183].

[181] "Adoptatus Ælius Verus ab Hadriano, eo tempore, quo jam—parum vigebat, et de ſucceſſore neceſſario cogitabat." Spart. in Æl. Vero. 3.

[182] Επει δε συνεβη τον Λουκιον τον Κομμοδο εξαιφνης εγκαταλειφθηναι υπο του αιματος πολλου τ και αθροου εκπεσοντος, συνεκαλεσε τους πρωτους κα αξιολογους των βουλευτων οικαδε· και κατακειμενος ειπεν αυτοις ταδε· —— "Επει δε εκεινον το δαιμονιον "ημων αφειλετο, ευρον αντ' εκεινου αυτοκρατορα "υμιν, ον διδωμι, ευγενη, πραον, ευεικλον, Φρονιμον, "μηθ' υπο νεοτητος προπεπες, μηθ' υπο γηρως αμι"λες ποιησαι τι δυναμενον· ηγμενον κατα τους νο"μους, ηγεμονευκοτα κατα τα πατρια, ωστε μητε "τι αγνοειν των εις την αρχην φερουτων, και πασιν "αυτοις καλως δυνασθαι χρησασθαι. Λεγω δε Αυ"ρηλιον Αντωνινον τουτον· ον ει και τα μαλιστα οιδα "απραγμονεστατον τε ανδρων οντα, και ποῤῥω τοιαυ"της επιθυμιας καθεστηκοτα, αλλ' ουτι γε και "αφροντιστησειν οιομαι ουτε εμου ουτε υμων, αλλα "και ακοντα την αρχην υποδεξεσθαι." Dio Caſſ. 69. 20. "Maxime, cum et ſemper "rempublicam bene egiſſet Antoninus, et in "proconſulatu ſe ſanctum gravemque præ"buiſſet." Jul. Cap. in Ant. Pio. 4.

[183] "Pius cognominatus eſt a ſenatu,— "quod vere natura clementiſſimus, et nihil "temporibus ſuis aſperum fecit." Id. ib. 2. "Pius propter clementiam dictus eſt." Eutr. 8. 4.

If we can believe the antient hiſtorians, both his mind and body were a complete aſſemblage of perfection, without the ſmalleſt teint of vice or deformity [184]. Great as were the virtues of his private life, they ſhone with brighter luſtre in the imperial throne [185]; and breathed a ſpirit of moderation and goodwill to all mankind, which the fierce and heroic conquerors of the Roman world too often deſpiſed as unprincely and puſillanimous.

Military glory ſeems to have occupied but a very ſmall place in this prince's affections, he being much more anxious to defend his territories than to enlarge them [186]; and thinking it greater honor to preſerve the life of a ſingle citizen, than to deſtroy a thouſand enemies [187]. It is true, that neceſſity obliged him to wage ſome wars; but they were always conducted by his generals [188], while his own attention was employed, for more than twenty years, in maintaining, as far as poſſible, the tranquillity of the empire; from whence he was juſtly compared to Numa, as Trajan was to Romulus [189]. This unalterable love of peace, wholly untinctured with timidity, commanded the reſpect of the moſt determined and inveterate enemies of the Roman name, ſo that he was conſidered as

[184] "Hunc fere nulla vitiorum labes maculavit." Sex. Aur. Vict. de Cæſ. 15. "Tantæ bonitatis in principatu fuit, ut haud dubie ſine exemplo vixerit." Id. epit. 15. "Nulli acerbus, cunctis benignus." Eutr. 8. 4. "Fuit vir forma conſpicuus, ingenio clarus, moribus clemens, nobilis vultu, et placidus ingenio, ſingularis eloquentiæ, nitidæ literaturæ, præcipue ſobrius: diligens agri cultor, mitis, largus, alieni abſtinens; et omnia hæc cum menſura, et ſine jactantia." Jul. Cap. in Ant. Pio. 2.

[185] "Vixit ingenti honeſtate privatus: majori, in imperio." Eutr. 8. 4.

[186] "In re militari moderata gloria, defendere magis provincias, quam ampliſicare ſtudens." Eutr. 8. 4.

[187] "Tantum ſane autoritatis apud exteras gentes habuit; cum ſemper amaverit pacem, eo uſque, ut Scipionis ſententiam frequentârit, qua ille dicebat, *Malle ſe unum civem ſervare, quam mille hoſtes occidere.*" Jul. Cap. in Ant. Pio. 9.

[188] "Per legatos ſuos plurima bella geſſit." Jul. Cap. in Ant. Pio. 5.

[189] "Vir inſignis qui merito Numæ Pompilio conferatur, ita ut Romulo Trajanus æquetur." Eutr. 8. 4. "Quamvis eum Numæ contulerit ætas ſua, cum orbem terræ nullo bello per annos viginti tres auctoritate ſola rexerit." Sex. Aur. Vict. epit. 15. "In cunctis poſtremo laudabilis, et qui merito Numæ Pompilio, ex bonorum ſententia, comparatur." Jul. Cap. in Ant. Pio. 2.

a common

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a common parent and patron of the adjacent nations; and was even choſen the judge and arbitrator, to compoſe the differences among foreign potentates [190]. He governed the dependent countries, and managed their concerns, with the ſame care and tenderneſs as if they had been part of his own houſehold; and thus made them all flouriſhing and happy [191]. He gave expreſs directions to his officers to be moderate in collecting the tributes; lent a willing ear to all complaints that were made againſt them; obliged thoſe, who had been guilty of any exactions, to render a particular account of their conduct; and never ſhewed any ſatisfaction in thoſe gains, whereby a provincial ſubject was oppreſſed [192]. He beſtowed wealth and honor upon the præfects with a liberal hand; but, if obliged to condemn any of them to death for extortion, he relinquiſhed the forfeited eſtates to their children, upon their making reſtitution to the ſufferers [193].

The ſtatelineſs of the imperial character he tempered with the utmoſt courteſy, in which he appeared to great advantage over the leſs condeſcending officers of his court; who, as he did nothing

[190] "Adeo trementibus eum atque amantibus cunctis regibus, nationibuſque, et populis, ut parentem ſeu patronum magis quam dominum imperatoremve reputarent: omneſque uno ore in cœleſtium morem propitium optantes, de controverſiis inter ſe judicem poſcerent. Ad quem etiam Indi, Bactri, Hyrcani legatos miſere, juſtitia tanti imperatoris comperta, quam ornabat vultu ſereno et pulchro, procerus membra, decenter validus." Sex. Aur. Vict. 15. "Regibus amicis venerabilis non minus quam terribilis: adeo ut barbarorum plurimæ nationes diſpoſitis armis, ad eum controverſias ſuas liteſque deferrent, ſententiæque ejus parerent." Eutr. 8. 4.

[191] "Tanta ſane diligentia ſubjectos ſibi populos rexit, ut omnia et omnes, quaſi ſua eſſent, curaret. Provinciæ ſub eo cunctæ floruerunt." Jul. Cap. in Ant. Pio. 7.

[192] "Procuratores ſuos modeſte ſuſcipere tributa juſſit; excedentes modum, rationem factorum ſuorum reddere præcepit: nec unquam lætatus eſt lucro, quo provincialis oppreſſus eſt. Contra procuratores ſuos conquerentes libenter audivit." Id. ib. 6.

[193] "Præfectos ſuos et locupletavit, et ornamentis conſularibus donavit. Si quos repetundarum damnavit, eorum liberis bona paterna reſtituit: ea tamen lege, ut illi provincialibus redderent, quod parentes acceperant." Id. ib. 10.

by

by agents, and abhorred all clandeſtine tranſactions, could no longer terrify the people, nor convert the favors of their maſter to their own private advantage[194]. Such as performed no duties he deprived of their ſalaries; ſaying, that nothing could be more ſordid, or even cruel, than for any one to prey upon the public, who, by his labor, contributed nothing to its welfare[195].

In the adminiſtration of the civil government he affected no independence; but gave an account of whatever he did either in conjunction with the fathers, or by his own authority[196]; and paid the ſame reſpect to the ſenate after he became Emperor, as he wiſhed a prince to ſhew to himſelf, when in a private ſtation[197]. He ſought out men of the moſt diſtinguiſhed integrity and abilities, for his coadjutors; profeſſing the higheſt eſteem for the upright and virtuous, with no leſs deteſtation of the undeſerving, though without the leaſt tincture of bitterneſs[198]: and, with the aſſiſtance of ſuch learned counſellors, he improved the conſtitution by the addition of many uſeful laws[199].

Superior to every mean emotion of ſuſpicion, and too generous to avenge perſonal injuries, he would never permit any inquiries to be made of conſpiracies formed againſt himſelf[200]. But, as guardian of

[194] "Imperatorium faſtigium ad ſummam "civilitatem deduxit; unde plus crevit re- "cuſantibus aulicis miniſtris: qui, illo nihil "per internuntios agente, nec terrere po- "terant homines aliquando, nec ea, quæ "occulta non erant, vendere." Jul. Cap. in Ant. Pio. 6.

[195] "Salaria multis ſubtraxit, quos otioſos "videbat accipere; dicens, *Nihil eſſe for- "didius, imo crudelius, quam ſi rempublicam "quis arroderet, qui nihil in eam ſuo labore "conferret.*" Id. ib. 7.

[196] "Omnium, quæ geſſit, et in ſenatu et "per edicta, rationem reddidit." Id. ib. 12.

[197] "Senatui tantum detulit imperator, "quantum, cum privatus eſſet, deferri ſibi "ab alio principe optavit." Id. ib. 6.

[198] "Viros juſtiſſimos ad adminiſtrandam "rempublicam quærens, bonis honorem ha- "bens, improbos ſine aliqua acerbitate de- "teſtans." Eutr. 8. 4.

[199] "Multa de jure ſanxit: uſuſque eſt "jurisperitis, Vinidio Vero, Salvio Valente, "Voluſio Metiano, Ulpio Marcello, et Ja- "voleno." Jul. Cap. in Ant. Pio. 12.

[200] "Adeo manſuetus, ut inſtantibus pa- "tribus ad eos qui contra eum conjurave- "rant, perſequendos, compreſſerit quæſtio- "nem, præfatus, neceſſe non eſſe, ſceleris in "ſemetipſum cupidos, pertinacius indagari." Sex. Aur. Vict. epit. 15.

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the public peace, he carefully ſuppreſſed all popular ſeditions; not indeed with an arbitrary ſpirit of cruelty, but with a ſtrictneſs, duly moderated by humanity[201]. The title of *Father of his Country*, which modeſty at firſt induced him to decline, he accepted in the end, with the warmeſt expreſſions of ſatisfaction and gratitude[202]; and ſhewed his true feeling of ſo ſignificant a compliment, in the parental regard and affection which he extended to all parts of his dominions[203].

Finding the hand of death upon him, his whole converſation was employed upon his beloved country, and upon thoſe kings who had incurred his diſpleaſure[204]; and having recommended the commonwealth, together with his only daughter, to the care of his adopted ſucceſſor, he calmly reſigned his breath[205], amidſt the ſincere lamentations of his affectionate ſubjects, who inſtantly gave him a place among the gods; and, with the deepeſt impreſſion of his exemplary virtues, decreed him every honor which had hitherto been conferred upon the worthieſt of his predeceſſors[206].

M. Aurelius Antoninus and L. Verus, A. D. 161.

Marcus Aurelius Antoninus, ſurnamed the Philoſopher, having ſucceeded by the right of adoption, aſſumed Lucius Verus for his partner; which joint-adminiſtration of two princes with equal authority, was an entire novelty in the Roman conſtitution[207]: at

201 "Seditiones ubicunque factas, non "crudelitate, ſed modeſtia et gravitate com- "preſſit." Jul. Cap. in Ant. Pio. 12.

202 "*Patris Patriæ* nomen, delatum a ſe- "natu, quod primo diſtulerat, cum ingenti "gratiarum actione ſuſcepit." Id. ib. 6.

203 "Quæ incredibili diligentia ad ſpe- "ciem optimi patrisfamilias exſequebatur." Sex. Aur. Vict. epit. 15.

204 "Alienatus in febri, nihil aliud, quam "de republica, et de his regibus, quibus "iraſcebatur, loquutus eſt." Jul. Cap. in Ant. Pio. 12.

205 "Tertia die, cum ſe gravari videret, "Marco Antonino, rempublicam et filiam, "præſentibus præfectis, commendavit.— "Atque ita converſus quaſi dormiret, ſpiri- "tum reddidit." Id. ib.

206 "A ſenatu Divus eſt appellatus; cunctis "certatim adnitentibus: cum omnes ejus "pietatem, clementiam, ingenium, ſanctimoniam, laudarent. Decreti etiam ſunt "omnes honores, qui optimis principibus "ante delati ſunt." Id. ib. 13.

207 Μαρκος δε Αὐρηλιος, σπουδὴ του ποιησαμενου αὐτον τελευτησαντος Αντωνινου την αρχην ισχει, προσειληφει ες κοινωνιαν του κρατους συνδυς τον του Λουκιου Κομμοδου υἱον Λουκιον Βηρον. Dio Caſſ. 71. 1. "Aurelius, ſocero—mortuo—fratrem "Lucium Verum in ſocietatem potentiæ "accepit." Sex. Aur. Vict. de Cæſ. 16. id. epit. 15.

preſent,

preſent, however, it was productive of no inconvenience, as the gentleneſs of their behaviour alleviated even the loſs of the humane and virtuous Antonine[208]. But, in a courſe of years, as the practice became common, and was exerciſed without due reflexion, or proper attention to the characters of the perſons thus aſſociated, it was the ſource of infinite confuſion, by dividing the ruling power, and by deſtroying that unity of intereſts, which is eſſential to the exiſtence of a monarchy; and may, therefore, be very juſtly reckoned among the principal cauſes which led to the decline of this once potent and flouriſhing empire[209].

It ſhould ſeem that Aurelius was induced to accept the government by the preſſing intreaties of the ſenate, rather than by his own inclination; and that he made choice of Verus[210], who was younger, and of a more military turn[211], to relieve him from the toils of the camp; and to furniſh him with more leiſure to purſue his ſtudies, and to cultivate the affections of his ſubjects[212]. This union continued, in all appearance, to the mutual ſatisfaction of both, as well as to the general good of the empire, for about eleven years; when Verus was ſuddenly ſnatched away, almoſt in the arms of his

[208] "Adepti imperium, ita civiliter ſe "ambo egerunt, ut lenitatem Pii nemo deſi-"deraret." Jul. Cap. in M. Aur. 8.

[209] "Tum primum Romana reſpublica "duobus, æquo jure imperium adminiſtran-"tibus, paruit; cum uſque ad eum ſingulos "ſemper habuiſſet Auguſtos." Eutr. 8. 5. "Ex eo pariter cæperunt rempublicam re-"gere. Tumque primum Romanum im-"perium duos Auguſtos habere cæpit." Jul. Cap. in M. Aur. 7.

[210] "Poſt exceſſum Divi Pii, a ſenatu co-"actus regimen publicum capere, fratrem "ſibi participem in imperio deſignavit." Id. ib.

[211] Ὁ δὲ Λούκιος, ἐρῤῥωτό τε καὶ νεώτερος ἦν, καὶ στρατιωτικοῖς τε ἔργοις καταλληλότερος. ὅθεν—αὐτὸν—ὁ Μᾶρκος ποιησας εἰς τὸν πρὸς Παρθους ἐπεμψε πολεμον. Dio Caſſ. 71. 1.

[212] Αὐλος μὲν ἀσθενὴς ἦν τῷ σώματι, καὶ τὰ πολλὰ λογοις ἰσχολαζε. λογίδιαι γαρ, καὶ αὐτοκρατωρ ὢν, μὴ αἰδεισθαι μηδὲ ὁκνειν ἐς διδασκαλου φοιτᾶν, ἀλλὰ καὶ Σιξτῳ προσιεναι τῷ ἐκ Βοιθων φιλοσοφῳ, καὶ ἐς ἀκροασιν τῶν ῥητόρων Ἑρμογενους λογων μὴ ὀκνησαι παραγινεσθαι· προσεκειτο δὲ τοις ἐκ τῆς στοᾶς μαλιστα δογμασι. Id. ib. "Philoſophiæ ſtudens, literā-rumque Græcarum peritiſſimus." Sex. Aur. Vict. ep. 16. "Philoſophiæ deditus Stoicæ; "ipſe etiam non ſolum vitæ moribus, ſed "etiam eruditione philoſophus." Eutr. 8. 6. "Dabat ſe Marcus totum philoſophiæ, "amorem civium affectans." Jul. Cap. in M. Aur. 8.

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brother, who now became ſole monarch for the remainder of his life[213].

The political conduct of this worthy prince was quite of a piece with that reſpectable title by which he was diſtinguiſhed. His virtues were of that refined nature, that it was much eaſier to admire, than to praiſe, him[214]. It was his greateſt pride to verify the ſaying of Plato, that "States would be happy, when princes were "philoſophers[215]." The integrity of his heart, the excellence of his underſtanding, and his active zeal for the public good, made him appear like a guardian angel, armed with power from heaven, to repel thoſe evils which threatened the utter ruin of the empire[216].

Though ſtrongly addicted to a contemplative courſe of life, his philoſophy was not of that ſevere, fantaſtic, and viſionary kind, as to detach him from ſociety, to render him unfit for the world, or to incapacitate him for the diſcharge of his duties[217]; on the contrary, he made it the chief glory of his reign, to promote and encourage the uſeful arts[218]; and, above all, to acquire a perfect knowledge

213 "Qui Verus inter Altinum atque Concordiam iter faciens, ictu ſanguinis, quem "morbum Græci ἀποπληξίαν vocant, undecimo imperii anno extinctus eſt.——Poſt "cujus obitum Marcus Antoninus rempublicam ſolus tenuit." Sex. Aur. Vict. epit. 16. "Una quoque poſteaquam iter "ingreſſi ſunt, ſedens cum fatre in vehiculo "Lucius, apoplexia correptus periit." Jul. Cap. in M. Aur. 14.

214 "Vir, quem mirari facilius, quis, "quam laudare poſſit." Eutr. 8. 6.

215 "Sententia Platonis ſemper in ore fuit, "*Florere civitates, ſi philoſophi imperarent, "aut imperatores philoſopharentur.*" Jul. Cap. in M. Aur. 27.

216 "Iſte virtutum omnium, cæleſtiſque ingenii exſtitit, ærumniſque publicis quaſi "defenſor objectus eſt. Etenim niſi ad "illa tempora natus eſſet, profecto quaſi uno "lapſu ruiſſent omnia ſtatus Romani.—— "Credo divinitus attributum, ut dum mundi "lex, ſeu natura aliudve quid hominibus "incognitum ea mala gignit, rectorum "conſiliis tanquam medicinæ remediis leniatur." Sex. Aur. Vict. 16.

217 "Sed ab omnibus his intentionibus "ſtudium eum philoſophiæ abduxit; ſeriumque et gravem reddidit: non tamen "prorſus abolita in eo comitate; quam "præcipue ſuis mox amicis atque etiam "minus notis exhibebat: cum frugi eſſet "ſine contumacia, verecundus ſine ignavia, "ſine triſtitia gravis. Jul. Cap. in M. Aur. 4.

218 "Tantum illo imperante floruere "*artes bonæ*, ut illam gloriam etiam temporum putem." Sex. Aur. Vict. de Cæſ. 16.

of

of the laws of his country [219], ſeveral of the ambiguities and difficulties of which he cleared up and removed; and improved the general ſyſtem by many important alterations [220]; though, upon the whole, he rather reſtored the old laws, than enacted new [221].

To add weight to the authority of the ſenate, to which none of his predeceſſors ever paid ſo great a deference as himſelf, he gave them cogniſance of a variety of cauſes, wherein perſons of conſular and prætorian rank were intereſted; and more particularly in thoſe which concerned his own imperial office [222]; he likewiſe made them judges in all appeals from the conſuls [223]. He introduced many of his friends into the ſenate, diſtinguiſhing them with ædilitian and prætorian dignities; and conferred ſimilar honors upon other neceſſitous ſenators, who were not reduced to poverty by their own criminal conduct: but would ſuffer none to be choſen into that order, without a perſonal acquaintance with his character [224]. He paid this further compliment to the ſenators, that, when any one of them was to be tried for a capital offence, the inquiry ſhould be firſt made in ſecret, and then be laid before the public: neither would he ſuffer the knights to be preſent at ſuch trials [225]. But in this he ſeems to have ſhewn more partiality than judgment. While reſi-

[219] "Studuit et juri; audiens Lucium Voluſium Mæcianum." Jul. Cap. in M. Aur. 3.

[220] "Legum ambigua mire diſtincta, vadimoniorumque ſolemni remoti denuntiandæ litis, operiendæque ad diem commode jus introductum." Sex. Aur. Vict. de Cæſ. 16.

[221] "Jus autem magis vetus reſtituit quam novum fecit." Jul. Cap. in M. Aur. 11.

[222] "Senatum multis cognitionibus, et maxime ad ſe pertinentibus, judicem dedit.—Neque quiſquam principum amplius ſenatui detulit. In ſenatus autem honorificentiam, multis et prætoriis et conſularibus privatis decidenda negotia delegavit: quo magis eorum cum exercitio juris auctoritas creſceret." Id. 10.

[223] "Senatum appellationibus a conſule factis, judicem dedit." Id. ib.

[224] "Multos ex amicis in ſenatum allegit, cum ædilitiis aut prætoriis dignitatibus. Multis ſenatoribus pauperibus ſine crimine, dignitates tribunitias ædilitiaſque conceſſit. Nec quenquam in ordinem legit, niſi quem ipſe bene ſciſſet." Id. ib.

[225] "Hoc quoque ſenatoribus detulit, ut, quoties de eorum capite eſſet judicandum, ſecreto pertractaret, atque ita in publicum prodiret: nec pateretur equites Romanos talibus intereſſe cauſis." Id. ib.

dent

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dent in Rome, he frequented the ſenate in perſon, even though he had nothing in particular to propoſe to them; but if he had, he would leave his retirement in the country on purpoſe[226]. He likewiſe attended their "comitia" quite to the evening, and never left the aſſembly, till the conſul had diſmiſſed it in the uſual form[227].

When diſengaged from the buſineſs of war, he occupied himſelf in the adminiſtration of juſtice, allowing ample time for the pleadings of the advocates; and ſo carefully inveſtigating the truth, that he often devoted eleven or twelve days to the hearing of a ſingle cauſe[228]: and that he might not fall into errors by following his own judgment alone, he called to his aſſiſtance ſeveral of the principal magiſtrates, by whoſe authority and advice he delivered his ſentences[229]; and for the greater diſpatch of buſineſs increaſed the number of juridical days to two hundred and thirty in the whole year[230]. He applied his mind, with indefatigable attention, to every branch of his duty, thinking that a prince ought to tranſact nothing haſtily; and that if he were negligent in trifles, he ſhould not eaſily eſcape cenſure in matters of greater conſequence[231].

[225] "Semper autem, cum potuit, interfuit ſenatui, etiamſi nihil eſſet referendum, ſi Romæ fuit: ſi vero aliquid referre voluit, etiam de Campania ipſe venit." Jul. Cap. in M. Aur. 10.

[227] "Comitiis præterea etiam uſque ad noctem frequenter interfuit: neque unquam receſſit de curia, niſi conſul dixiſſet, *Nihil vos moramur, patres conſcripti.*" Id. ib.

[228] Ο δ' αυτοκρατωρ, ὡσακις απο του πολεμου σχολην ηγεν, εδικαζε, και υδωρ πλειστον τοις ῥητορσι μιτρεισθαι εκελευε. τας τε πυστεις και τας ανακρισεις επι μακροτερον εποιειτο, ὡστε παντα χοθεν το δικαιον ακριβουν. και κατα τουτο ενδεκα πολλακις και δωδεκα ἡμεραις την αυτην δικην, καιπερ νυκτος εσιν ὁτε, δικαζων εκρινε. Dio Caſſ. 71. 6.

[229] "Habuit ſecum præfectos, quorum ex autoritate et periculo ſemper jura dictavit." Jul. Cap. in M. Aur. 10.

[230] "Judiciariæ rei ſingularem diligentiam adhibuit: faſtis dies judiciarios addidit, ita, ut ducentos triginta dies annuos rebus agendis litibuſque diſceptandis conſtitueret." Id. ib.

[231] Φιλοπονος γαρ ην, και ακριβως πασι τοις τη αρχη προσηκουσι προσεφερετο· και ουδεν ευπαιργον ουτε ελεγεν ουτε εγραφεν ουτε εποιει, αλλ' εγιν ὁτι και περι του βραχυτατου ἡμερας ὁλας ανηλισκεν, ουκ αξιων τον αυτοκρατορα εξ επιδρομης τι πρατ'ειν. και γαρ ενομιζεν ὁτι κ-αν ελαχιστον τι παριδῃ διαβολην αυτῳ τουτο και επι τα αλλα παντα οισει. Dio Caſſ. 71. 6.

He

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He treated all the people as if they were members of a free ſtate [232]; and admitted all promiſcuouſly to the freedom of the city [233]. Well appriſed how much an univerſal purity of manners conduced to the public welfare, he was zealous in his endeavours to draw his ſubjects from their evil courſes; not terrifying them by ſeverity, but inviting them with rewards, and thus alluring them from the loweſt ſtages of vice, to the higheſt of virtue [234]. Exempt from any wilful failings himſelf, he patiently bore the failings of others; neither prying into, nor puniſhing, them with too much ſtrictneſs. Whatever he diſcovered valuable, even in an irregular character, he applauded and encouraged; and frequently employed the perſon in thoſe matters to which his qualities were ſuited, without regarding his defects in others: for he often uſed to obſerve that, as it was impoſſible to bring mankind to that ſtandard of goodneſs he could wiſh, it was neceſſary to take advantage of ſuch perfections as were to be found, and apply them to the uſe of the commonwealth [235].

When obliged to inflict puniſhments, they were uſually inferior to what the laws injoined; though againſt ſuch as were guilty of heinous crimes he was inexorable. Perſons of higher rank, who were arraigned of capital offences, he tried himſelf with the utmoſt equity and impartiality; and once rebuked a prætor for hurrying over the cauſes of criminals, commanding him to hear them over again; and ſaying, it concerned their dignity, to be judged be-

[232] "Cum populo autem non aliter egit, "quam eſt actum ſub civitate libera." Jul. Cap. in M. Aur. 12. "Hic cum omnibus "Romæ æquo jure egit." Eutrop. 8. 6.

[233] "Data cunctis promiſcue civitas Ro- "mana." Sex. Aur. Vict. de Cæſ. 16.

[234] "Fuit per omnia moderatiſſimus in "hominibus deterrendis a malo, invitandis "ad bona, remunerandis copia, indulgentia "liberandis: fecitque ex malis bonos, ex "bonis optimos." Jul. Cap. in M. Aur. 12.

[235] Αυτος μεν απαιδων των αμαρτηματων απεσχιλο, και ουθε ικων ουθε ακων επλημμελει· τα δε δη των αλλων αμαρτηματα, και ουτε επολυπραγμονει, ουτε εκολαζε. και ει μεν τις χρηστον τι επραττει, επηνει, και ιχρητο εις εκεινο αυθις· των δε αλλων ου προσεποιειτο· λεγων, "ὁτι ποιησαι μεν τινι ανθρωπους, "οποιους βουλεται ισχυι, αδυνατον εστιν· τοις δε ουσι "προσηκει, εις ὁ, τι αν τις αυτων τῳ κοινῳ χρησιμος "ᾖ, χρησθαι." Dio Caſſ. 71. 34.

fore

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fore him, who was the common magiſtrate over the whole people[235]. The ſame mercy which he ſhewed to his ſubjects, he extended to his captive enemies, receiving them under his protection, and giving them ſettlements within the Roman territories[237]. To the princes of the bordering countries he conducted himſelf with equity and moderation, making peace with them upon liberal terms; whereby he ſecured the affections of the provinces of the Eaſt[238].

Thus, without caprice, affectation, or hypocriſy, he perſevered in a ſincere and uniform exerciſe of the functions of his imperial office; but not having a conſtitution adequate to the fatigues of government[239], he arrived only at the verge of old age, when he calmly yielded to the common lot of mortality[240]; leaving the world to bewail in him the loſs either of a father, a brother, or a ſon[241]; and to feel, by fatal experience, that ſuch excellencies were not hereditary.

[236] "Erat mos iſte Antonino, ut omnia "crimina minore ſupplicio, quam legibus "plecti ſolent, puniret: quamvis nonnun-"quam contra manifeſtos et gravium cri-"minum reos inexorabilis permaneret. "Capitales cauſas hominum honeſtorum ipſe "cognovit, et quidem ſumma æquitate, ita, "ut prætorem reprehenderet, qui cito reorum "cauſas audierat, juberetque illum iterum "cognoſcere; "*Dignitatis eorum intereſſe* di-"cens, *ut ab eo audirentur, qui pro populo* "*judicaret.*" Jul. Cap. in M. Aur. 24.

[237] "Æquitatem etiam circa captos "hoſtes cuſtodivit, infinitos ex gentibus in "Romano ſolo collocavit." Id. ib.

[238] "Multa egit cum regibus, et pacem "confirmavit, ſibi occurentibus cunctis regi-"bus et legatis Perſarum. Omnibus orien-"talibus provinciis cariſſimus fuit." Id. ib. 26. "Provincias ingenti benignitate et "moderatione tractavit." Eutr. 8. 6.

[239] Αριστα δη απαιδων των εν κρατει τιθι γινομενων ηρξε· πλην καθοσον ου πολλα τω σωματι ανδριζεσθαι εδυνατο, καιτοι τουτο εξ ασθενεστατου καρτερικωτατου απεδειξε. Dio Caſſ. 71. 34.

[240] Ὁτι ου προσποιητως, αλλ' εξ αρρωστιας παυλα επραττε, προδηλον· ετη γαρ και πεντηκοντα και μηνας δεκα, ἡμερας τε εικοσι και δυο ζησας, πρὸν τουτοις τω τε περι Αὐρηλιωνα συχνον χρονον ὑπαρξας, και αὐτος επτα και δεκα ετη, και ἑνδεκα ἡμερας αὐτοκρατησας, ὁμοιος δια παντων εγενετο και εν ουδενι ηλλοιωθη. ὡστε ὡς αληθως αγαθος ανηρ ην, και ουδεν προσποιητον ειχε. Id. ib.

[241] "Cum igitur in amore omnium im-"peraſſet, atque ab aliis modo *frater*, modo "*pater*, modo *filius*, ut cujuſque ætas fine-"bat, et diceretur, et amaretur; octavode-"cimo anno imperii ſui, ſexageſimo et primo "vitæ, diem ultimum clauſit." Jul. Cap. in M. Aur. 18.

It

It is no wonder, that a prince poſſeſſed of ſuch active and popular virtues ſhould have been deified by his affectionate ſubjects [242]; that being a compliment which too often fell to the ſhare of the moſt undeſerving of his predeceſſors: but to ſhew that even ſuperſtition is not always inſenſible to real merit, nor incapable of making juſt diſtinctions between characters, his memory was preſerved with every honorable mark of diſtinction, which both gratitude and extravagance could invent [243]; a ſtatue was erected to him in the court of juſtice of pure gold [244]; and it was deemed almoſt ſacrilege, in every one whoſe fortune could afford it, not to place his image among the tutelary deities of the family; a faſhion which continued for ſeveral ſubſequent ages [245].

A ſucceſſion of princes, ſo truly wiſe, virtuous, and benevolent, as thoſe from Nerva to Aurelius, is hardly to be paralleled in the hiſtory of any age or country, ſince the eſtabliſhment of civil ſociety. By being themſelves the pureſt examples of ſubmiſſion to the laws of their country, and by holding in juſt contempt the gaudy pageantry of majeſty, they erected a more durable ſovereignty in the hearts of their ſubjects, than the terror of exterior force could have impoſed upon their perſons. The imperial power, by ſuch a careful and moderate uſe of it, was rendered ſo truly amiable in the eyes

[242] "Certis omnibus, quod a Diis commodatus, ad Deos rediſſet." Jul. Capi. in M. Aur. 18.

[243] "Priuſquam funus conderetur, ut "plerique dicunt (quod nunquam antea "factum fuerat, neque poſtea), ſenatus po-"puluſque, non diviſis locis, ſed in una "ſede, *propitium deum* dixit." Id. ib. "Cum igitur fortunatam rempublicam et "virtute et manſuetudine reddidiſſet, obiit "decimo octavo imperii anno, vitæ ſexage-"ſimo primo: et omnibus certatim adni-"tentibus, inter divos relatus eſt." Eutr. 8. 7.

[244] Τελευτησας δε, αλλα τε πολλα εις τιμην ηλθε, και χρυσους εις αυλο το συνεδριον ετη. Dio Caſſ. 71. 34.

[245] "Et parum ſane fuit, quod illi hono-"res divinos omnis ætas, omnis ſexus, om-"nis conditio ac dignitas dedit; niſi, quod "etiam ſacrilegus judicatus eſt, qui ejus "imaginem in ſua domo non habuit, qui "per fortunam vel potuit habere, vel de-"buit. Denique hodieque in multis domi-"bus Marci Antonini ſtatuæ conſiſtunt inter "deos penates." Jul. Cap. in M. Aur. 18. that is, to the time of Dioclesian.

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of the whole people, that it had now gained a complete aſcendency over every other part of the antient conſtitution: and could the force of nature have gone far enough to have ſupported a like ſucceſſion in future times, the Roman empire might ſtill have been the delight and envy of the admiring world.

But this magnificent edifice, now brought to the height of its beauty and perfection, from henceforward began to decay [246]. What Pliny applied to Trajan, is equally applicable to all his other ſucceſſors down to this time; that they had laid a burden not only upon all following princes, but likewiſe upon the people in general; for that theſe would expect of ſucceeding emperors that they ſhould endeavour to merit the ſame exalted characters; and they, not receiving the ſame tribute which had been ſo plentifully conferred upon their predeceſſors, would give looſe to their reſentment and indignation [247]: and the general conſequences of theſe mutual diſappointments would be, on one ſide, diſcontent and murmuring, and on the other, ſeverity and oppreſſion; all which predictions were too ſpeedily and fatally verified.

The confuſions that now enſued in the empire, from the frequent removal of one tyrant, and the ſetting up of another, very ſenſibly affected the purity of its civil policy, and corrupted the ſources both of its legiſlative and executive powers.

Commodus, A. D. 180.

Aurelius had anticipated the ſucceſſion of his ſon Commodus, by cauſing him to be proclaimed Cæſar [248], while yet a youth; hoping, moſt likely, that by the help of a good education, aſſiſted by his own

[246] Απο χρυσης τε βασιλειας ες σιδηρον και καλαιληψμενων, των τε πραγμαλων τοις τοτε Ρωμαιοις, και ημιν νυν καλαπισουσης της ιϛοριας. Dio Caſſ. 71. 36.

[247] "Oneraſti futuros principes, ſed et "poſteros noſtros; nam et hi a principibus "ſuis exigent, ut eadem audire mereantur: "et illi, quod non audiant, indignabuntur." Plin. Pan. 73.

[248] "Cum filio Commodo, quem Cæſarem "ſuffecerat." Sex. Aur. Vict. de Cæſ. 16. "Romæ rurſus cum Commodo Antonino "filio ſuo, quem jam Cæſarem fecerat, tri"umphavit." Eutr. 8. 6.

own excellent inſtructions[249], he would be fully qualified to execute that arduous truſt, which, in due time, was to be committed to his charge; but either his untoward and vicious diſpoſition, or the negligence of his courtly preceptors, totally fruſtrated theſe pious intentions[250]. It is certain that Aurelius was no ſtranger to the profligacy of his manners; as he freely ſignified his ſentiments of him to his friends, who were aſſembled round his death-bed[251]; and when aſked, to whoſe care he recommended his ſon, he anſwered; *To you, if he ſhould be worthy, and to the immortal gods*[252]. Though it is reported he often wiſhed him dead, rather than ſee him become like Caligula, Nero, or Domitian[253].

As there can be no doubt that Aurelius had the perpetual welfare of the Roman empire moſt ſincerely at heart, it is no ſmall matter of ſurprize, that he ſhould have tranſmitted his power to a profeſſed debauchee, who, he muſt be ſure, would employ it to the worſt purpoſes of oppreſſion. The whole that can be ſaid, and that not to excuſe, but only to account for it, is, that the firmneſs of the philoſopher yielded too eaſily to the weakneſs of the parent: and the ſenate and people, either out of gratitude to his memory, or from having now acquired a habit of implicit reverence for the will of

[249] "Commodum Marcus et ſuis præceptis et etiam magnorum atque optimorum virorum erudire conatus eſt." Æl. Lamp. in Com. 1.

[250] "Sed tot diſciplinarum magiſtri nihil ei profuerunt. *Tantum autem valet aut ingenii vis, aut eorum qui in aula inſtitutores habentur.* Nam a prima ſtatim pueritia, turpis, improbus, crudelis, libidinoſus, ore quoque pollutus et conſtupratus fuit." Æl. Lamp. in Com. 1.

[251] "Ante biduum quam exſpiraret, admiſſis amicis, dicitur oſtendiſſe ſententiam de filio eandem, quam Philippus de Alexandro; cum de hoc male ſentiret, addens; *minime ſe ægre mortem ferre, filium ſuperſtitem relinquens.* Nam jam Commodus turpem ſe et cruentum oſtentabat." Jul. Cap. in M. Aur. 27.

[252] "Et cum ab eo quæreretur, cui filium commendaret, ille reſpondit: *Vobis, ſi dignus fuerit, et Diis immortalibus.*" Id. ib. 28.

[253] "Fertur filium mori voluiſſe, cum eum talem videret futurum, qualis exſtitit poſt ejus mortem: ne, ut ipſe dicebat, ſimilis Neroni, Caligulæ et Domitiano eſſet." Id. ib.

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their princes, gave themſelves very little concern about the intrinſic merits of the ſon; but ſuffered him to take quiet poſſeſſion of the throne, without any ſeeming apprehenſions of the fatal difference they were ſoon to feel.

Commodus was, in the trueſt ſenſe of that odious appellation, a perfect tyrant; and, in one circumſtance eſpecially, he exceeded even the worſt of his predeceſſors, in that he performed not a ſingle act of goodneſs, to palliate the horror of his cruelties; or to deſtroy the uniformity of his abandoned and infamous character [254]. His reign, which was of no very ſhort duration [255], has been juſtly compared to a peſtilence [256], ſpreading terror and devaſtation through every quarter of his dominions [257]. After various ineffective attempts upon his life [258], he at laſt fell a victim to a ſecret conſpiracy [259], in the midſt of the univerſal execrations of all mankind, who pronounced him, even when dead, an enemy both of men and gods. The ſenate, in the extravagance of their joy, erazed his name from all public inſcriptions [260]; and, to inflict a ſtill deeper brand upon his memory, paſſed a moſt ſolemn judgment, deſcribing, in the genuine, perturbed eloquence of paſſion, their poignant feelings of their former ſufferings; which is ſtill preſerved by an antient hiſtorian, as a laſting monument of the natural antipathy, which

[254] "Sævior omnibus libidine atque avaritia, crudelitate. Nulli fidus: magiſque in eos atrox, quos ampliſſimis honoribus doniſque ingentibus extulerat." Sex. Aur. Vict. epit. 17. "Nihil paternum habuit;—luxuria et obſcænitate depravatus." Eutr. 8. 7.

[255] "Cum annis duodecim poſt patrem, et octo menſibus imperaſſet." Id. ib.

[256] Ην δε απαντων νοσημαιων και απαντων κακουργηματων χαλεπωτερος Ρωμαιοις ὁ Κομμοδος. Dio Caſſ. 72. 15.

[257] Ουτος μεν ὁ φοβος πασι κοινος και ημιν και τοις αλλοις ην. επραξε δε και ετερον τι τοιονδε προς ημας τους βουλευτας, εξ ου ουχ ηκιστα απολεισθαι προσεδοκησαμεν. Id. ib. 21.

[258] Και επεβουλευθη μεν ὁ Κομμοδος πολλακις ὑπο τινων, πολλα δε και απρεπη επραξε. Id. ib. 4.

[259] "Obiit morte ſubita, adeo ut ſtrangulatus, vel veneno interfectus putaretur." Eutr. 8. 7.

[260] "Tanta exſecratione omnium, ut hoſtis humani generis etiam mortuus judicaretur." Id. ib. "Quo cognito ſenatus,—ſimulque plebes hoſtem deorum atque hominum appellavere. Radendumque nomen cenſere." Sex. Aur. Vict. de Cæſ. 17. "Nomen ejus, alienis operibus inciſum, ſenatus eraſit." Æl. Lamp. in Com. 17.

even

even the moſt abject ſlaves bear to tyranny, when removed, but for a moment, beyond the reach of its vengeance[261].

Pertinax, A. D. 193.

The ſenate ſeized this opportunity to aſſert and recover their former right of nomination to the vacant throne; and inſtantly proclaimed A. Helvius Pertinax[262]; which honor he accepted with ſo much reluctance, that he is ſuppoſed from thence to have acquired his name[263]; though this muſt be a miſtake, as Dio, whoſe authority is much more to be relied on, ſpeaks of him by the ſame, many years earlier.

This prince, from a very obſcure origin, had recommended himſelf to the notice of former Emperors, who knew the value of merit; and having borne ſome of the chief offices in the ſtate, both military and civil, was now one of the moſt reſpectable perſonages of the times, as well for his age, as particularly for his ſimple, frugal, and primitive manners, in which he nearly reſembled the moſt illuſtrious characters of antient Rome[264]. His reign, unfortunately, was very

[261] "Acclamationes ſenatus poſt mortem "Commodi graves fuerunt. Ut autem ſci-"retur, quod judicium ſenatus de Commo-"do fuerit, ipſas acclamationes de Mario "Maximo indidi (it is the hiſtorian that "ſpeaks), et ſententiam ſenatuſconſulti." Æl. Lamp. in Com. 18. To which the reader is referred, it being too long to be here inſerted.

[262] "Confeſtim præfecto urbi, Aulo Hel-"vio Pertinaci imperium defertur." Sex. Aur. Vict. de Cæſ. 17. "Ex ſenatuſcon-"ſulto imperare juſſus." Eutr. 8. 8.

[263] "Iſte coactus imperavit, repugnanſque "imperium ſuſcipiens, tale cognomentum "ſortitus eſt." Sex. Aur. Vict. ep. 18. "The Greek hiſtorian, who was himſelf a ſenator, and preſent at the time, gives the following account of his behaviour on that occaſion: Εξιλθων δε εκ του τειχους, προς το συνεδριον, νυκτος ετι ουσης αφικετο· και ασπασαμενος ημας οπως τις (οια εν ομιλῳ και εν ωθισμῳ τοσουτῳ) προσελθειν αυτῳ ηδυνηθη, επειτα εκ του αυτοσχεδιου ειπεν ὁτι "Ωνομασμαι μεν ὑπο των στρατιωτων αυτο-"κρατωρ, ουδεν μεντοι της αρχης δεομαι, αλλ' εξεταμαι "ηδη και τημερον αυτης, δια τε την εμαυτου ηλικιαν "και ασθενειαν, και δια την των πραγματων δυσχε-"ρειαν." λεχθεντων δε, και επηνουμεν αυτου απο γνω-μης, και ὡς αληθως ἡρουμεθα. Dio Caſſ. 73. 1.

[264] Ην δε ὁ Περτιναξ Λιγυς εξ Αλβης Πομπηιας, πατρος ουκ ευγενους, γραμματα, ὁσον αποζην εξ αυτων, ησκημενος. Dio Caſſ. 73. 3. "Origine gen-"tis ſordida, præfecturam urbi agens Impe-"rator effectus." Sex. Aur. Vict. ep. 18. "Pertinax grandævus jam, ut ſeptuagena-"riam attigiſſet ætatem, præfecturam urbi "tum agens." Eutr. 8. 8. "Bello Parthico "induſtria ſua promeritus, in Britanniam "tranſlatus eſt, ac retentus.—Poſtea—vexil-"lis regendis adſcitus eſt. In quo munere "approbatus, lectus eſt in ſenatum.——Ex "quo eminente induſtria, ſtudio Marci im-"peratoris conſul eſt deſignatus.—Sæpiſ-"ſime Pertinax a Marco et in concione "militari,

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very ſhort, not exceeding three months[265]; yet in that time he gave proofs of a ſincere deſire to reſtrain the exorbitance of the imperial power, by mitigating the ſeverity of the laws in caſes of high-treaſon[266]. He ſuppreſſed the ſcrutiny into the value of eſtates; and ſeverely puniſhed informers, though ſtill with more mildneſs than former Emperors; and aſcertained the penalties which perſons of each particular rank ſhould incur, if found guilty of the crimes of which they were accuſed[267]. To reſtrain the claims of the prince over private property, he enacted a law, that former wills ſhould not be void, till ſubſequent ones ſhould be completed; and that the exchequer ſhould take no advantage of ſuch defects. And though the treaſury was utterly exhauſted[268] by the extravagance of Commodus, he proteſted againſt the acceptance of inheritances, which, according to the ſhameful adulation of the times, were bequeathed to himſelf, or eſcheated to him, in conſequence of any perplexed law-ſuit, to the prejudice of the true heirs; annexing the following reaſon to the act of ſenate, "That it was more juſt and reputable to come into "poſſeſſion of a poor government, than to arrive at wealth through "the paths of oppreſſion and infamy[269]."

Wiſhing

militari, et in ſenatu laudatus eſt: doluit, "que palam Marcus, quod cum ſenator "eſſet, præfectus prætorii fieri a ſe non poſſet. "—Bene geſtis his provinciis, Syriam me-"ruit." Jul. Cap. in Pert. 2. "Hic "doctrinæ omnis ac moribus antiquiſſimis: "immodice parcus, Curios æquaverat Fa-"bricioſque." Sex. Aur. Vict. de Cæſ. 18. "Amabat ſimplicitatem: communem ſe affa-"tu, convivio, inceſſu præbebat. Id. ep. 18. Περτιναξ δε ην μεν των καλων κ' αγαθων. Dio Caſſ. 73. 1. Των τε γαρ ψυχην αριστος ην. Id. ib. 1.

[265] "Helvius Pertinax imperavit dies "octaginta quinque." Sex. Aur. Vict. ep. 18. Ηξιωσε δε παυ βραχυ τινα χρονον. Dio Caſſ. 73. 1.

[266] "Quæſtionem majeſtatis penitus tulit "cum jurejurando. Revocavit etiam eos, "qui deortati fuerant crimine majeſtatis; "eorum memoria reſtituta, qui occiſi fue-"rant." Jul. Cap. in Pert. 6.

[267] "Cenſus retractari juſſit: delatores "vinctos graviter puniri juſſit; et tamen "mollius quam priores imperatores: unicui-"que dignitati, ſi delationis crimen incur-"reret, pœnam ſtatuens." Id. ib. 7.

[268] Τοσαυτα δε αρα τοτε το βασιλειον ωχετο χρηματια, ωστε πεντε και εικοσι μυριαδας δραχμων μονας ευρεθηναι. Dio Caſſ. 73. 5.

[269] "Legem ſane tulit, *teſtamenta priora* "*non prius eſſent irrita, quam alia perfecta* "*eſſent; neve ob hoc fiſcus aliquando ſuccede-*"*ret*. Ipſeque profeſſus eſt, *nullius ſe adi-*"*turum hæreditatem, quæ aut adulatione ali-*"*cujus delata eſt, aut lite perplexa, ut legitimi* "*heredes et neceſſarii privarentur*; addidit-"que

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Wiſhing as much as poſſible to revive the ſpirit of the antient conſtitution, and to merit the love of his people, he accepted the titles of *Emperor* and *Prince of the Senate*, in the ſame ſenſe in which they had been uſed by Auguſtus[270]. Under this authority he did every thing that could be expected from a good governor; rectifying many abuſes which had ariſen from the licentiouſneſs of the preceding reign; and adminiſtering the affairs of the commonwealth, with the ſame prudence as his own domeſtic concerns. He diſplayed a ſignal humanity and goodneſs in removing the marks of infamy, which had been inflicted upon the memory of divers innocent ſufferers under his bloody predeceſſor; and gave opportunity to the friends and relations of the deceaſed, to do proper honors to their decayed remains[271].

He affected nothing of the ſtately and unſocial pride of the monarch, but choſe to appear like what he really was[272]. He expreſſed the higheſt attachment to the ſenate, by attending its public meetings in perſon, making his motions in it according to the uſual forms; and eſteeming it his greateſt glory to act in conjunction with it[273]. He wiſhed likewiſe to reſign the empire, and return to his

"que ſenatuſconſulto hæc verba: *ſanctius* "*eſt, Patres Conſcripti, inopem rempublicam* "*obtinere, quam ad divitiarum cumulum per* "*diſcrimina atque dedecoris veſtigia perve-*"*nire.*" Jul. Cap. in Pert. 7.

270 Ουτω μεν ες την αρχην ὁ Περτιναξ καθιστη· και ολιγα τε τας τε αλλας επικλησεις τας προσηκουσας, και ετι και επι τω δημοτικω ειναι βουλεσθαι. προ κριτος γαρ της γερουσιας καλα το αρχαιον επωνομασθη. Dio Caſſ. 73. 5.

271 Ευθυς εις κοσμον, ὁσα πριν πλημμελως ειχε και ατακτως, καθιστατο. φιλανθρωπια τε γαρ και χρηστοτης, και οικονομια βελτιστη, και προνοια του κοινου επιμελεστατη, παρ' του αυτοκρατορα διεδεικνυτο. τα τε γαρ αλλα, ὁσα αν αγαθος αυτοκρατωρ, επραττεν ὁ Περτιναξ, και την ατιμιαν αφειλε των αδικως πεφονευμενων· και προσετι και επωμοσε, μηδεποτε τοιαυτην δικην προσδεξεσθαι. και αυτικα οι μεν, τους συγγενεις, οι δε, τους φιλους ανεκαλουν μετα δακρυων ὁμου και χαρας. ουδε γαρ ουδε τουτο πριν εξην ποιειν. και μετα ταυτα ανορυττομενοι τα σωματα, οι μεν ὁλοκληρα, οι δε μερη, ως που εκαστοι αυτων η του σκληρου η του χρονου ειχεν, ενθαπτουν, και ες τα προγονικα μνημεια απετιθεντο. Id. id. 73. 5.

272 "Imperium et omnia imperialia ſic "horruit, ut ſibi ſemper oſtenderet diſplicere. "Denique non alium ſe quam fuerat videri "volebat." Jul. Cap. in Pert. 13.

273 Senatui legitimo ſemper interfuit, ac "ſemper aliquid retulit." Id. ib. 9. "Fuit "in curia honorificentiſſimus; ita ut ſena-"tum faventem adoraret, et quaſi præfectus "urbi cum omnibus ſermonem participaret." Id. ib. 13.

private

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private ſtation: neither would he permit his children to be educated within the walls of the palace[274]; having certainly no views to their ſucceſſion to the throne. In the ordinary forms of behaviour he was courteous and acceſſible to perſons of all ranks, eſpecially to the ſenators, whom he received at his table, and entertained with a plain and frugal plenty: and though his ſimple ſtyle of life was a ſubject of ridicule to the opulent and oſtentatious, yet they who knew how to prefer virtue to luxury were laviſh in his praiſes[275].

A ſovereign ſo truly diſintereſted and patriotic was well qualified to revive the ſplendor of old Rome, or to bring back the merciful and philoſophical reign of Aurelius. And it is a matter of real wonder, how ſuch a variety of uſeful and popular acts could have been performed in ſo contracted a ſpace of a few months, which are not often to be expected from many others in the ſame high ſtation, in a greater number of years. But let this bright example, which blazed out but for a moment, and then expired for ever, ſerve as an an inſtructive leſſon to the princes of this world, to ſhew them of what ineſtimable value the ſmalleſt particle of time is in their hands; and how eaſily it may be employed in promoting the general happineſs of their people; when a wiſe head is under the guidance of a virtuous heart.

But ſuch qualities were of too pure, rigid and inflexible a nature, to ſuit with the temper of a profligate and reſtleſs ſoldiery, who were never ſatisfied but with a free indulgence in vice and rapine; and were, therefore, eaſily drawn into a conſpiracy againſt his

[274] "Voluit etiam imperium deponere, "atque ad privatam vitam redire. Filios "ſuos in palatio nutriri noluit." Id. ib.

[275] Εχρητο δε και ημιν (ſc. ſenatoribus) δημοτικωτατα. και γαρ ευπροσηγορος ην· ηκουε τι ετοιμως ὁ, τι τις αξιοιη, και απεκρινετο ανθρωπινως ὁσα ανδρι δοκοιη. ειγε και τι ημας σωφρονως· και ὁπολι μη τουτο ποιοιη, διεπεμπεν αλλοις αλλα και τα ενυπνια. και αυδον επι τουτῳ οι μεν πλουσιοι και μεγαλαυχοι, διεγελων· οι δε αλλοι, ὁις αρδην ασιλγιας προλιμοδεστερα ην, επηνουν. Dio Caſſ. 73. 3. This is the teſtimony of an hiſtorian, who ſeems himſelf to have often partaken of his bounty.

life,

life, which too ſurely ſucceeded at the inſtigation of a competitor, who had no other merit to intitle him to the imperial dignity, beſide money to purchaſe it [276]. But the people in general, who had felt the happy effects of the gentle government of Pertinax, though they could neither ſtop the ſacrilegious hand of treaſon, nor avenge his death, did proper juſtice to his character, and with inceſſant acclamations pronounced him a god; proclaiming, with raptures, the tranquillity they had enjoyed under his adminiſtration, and calling him their *affectionate father, the father of the ſenate, the father of all good men* [277]. On the acceſſion of Severus, the ſenate, deſirous of ſhewing all poſſible reſpect to his memory, performed his public obſequies; on which occaſion the Emperor himſelf ſpoke his funeral oration, and aſſumed his name as the ſignificant emblem of a good prince [278]; though he afterwards laid it aſide, at the deſire of ſome of his friends [279], who were conſcious, moſt probably, that he had no juſt pretenſions to ſo meritorious a title.

The unhappy event of the death of Pertinax being publicly known, Didius Julian, the principal author of the tumult, petitioned the army to appoint him the ſucceſſor; whereby a new, and unheard-of diſgrace was inflicted upon this potent empire, which, with the ca- Didius Julian, A. D. 193.

[276] "Eum milites, queis inhauſto jam, "perditoque orbe ſatis videtur nihil, impulſore Didio, fæde jugulavere octogeſimo "imperii die." Sex. Aur. Vict. de Cæſ. 18. "Scelere Juliani multis vulneribus obtruncatur." Id. ep. 18. Octogeſimo imperii "die prætorianorum militum ſeditione, et "Juliani ſcelere occiſus." Eutr. 8. 8.

[277] "Huic mortuo *Divi* nomen decretum "eſt: ob cujus laudem ingeminatis ad vocis uſque defectum, plauſibus, acclamatum "eſt, *Pertinace imperatore ſecuri vixímus: "neminem timuimus. Patri pio, patri ſenatus, patri omnium bonorum.* Sex. Aur. Vict. ep. 18. "Per ſenatum et populum "Pertinax inter deos relatus eſt." Jul. Cap. in Pert. 14.

[278] "Sub Severo autem imperatore, cum "ſenatus ingens teſtimonium habuiſſet Pertinax, funus imaginarium ei et cenſorium "ductum eſt, et ab ipſo Severo funebri lau"datione ornatus eſt. Ipſe autem Severus, "amore boni principis, a ſenatu *Pertinacis* "nomen accepit." Id. ib. 15. Τον Ιουλιανον θανατον καλιψηφισαμεθα, και τον Σεβηρον αυτοκρατορα ωνομασαμεν, τω τι Περτινακι ηρωικας τιμας απεδωκαμεν. Dio Caſſ. 73. 17.

[279] "Se quoque *Pertinacem* vocari juſſit: "quamvis poſtea id nomen aboleri voluerit, "querimonia amicorum." Æl. Spart. in S. Sev. 7.

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pital itſelf, was put up to ſale by a band of lawleſs ruffians, to be diſpoſed of for the ſole benefit of the aſſaſſins of their late excellent maſter. The whole was carried on with the true ſpirit and animoſity of a modern auction; and thus was Rome, with all her numerous appendages, transferred to Julian, the beſt bidder; and the principal author of that ſedition, which opened his way to theſe unmerited honors [230].

Thus ſupported by the whole power of the army, he ſhewed himſelf before the ſenate, which, through fear, was met to receive him; where, in a very ſingular oration, boaſting of virtues he never poſſeſſed, and of moderation he never exerciſed, he demanded a confirmation of his appointment, with which this mean and daſtardly aſſembly immediately complied [231], and acknowledged him Emperor by an unanimous vote, decreeing to him, at the ſame time, the other cuſtomary honors and privileges [232]. From hence he immediately proceeded to the palace, where he ſpent the night in gluttony and riot; inſulting over the mangled corpſe of his venerable predeceſſor [233].

[230] Ὁυῖος (ſc. Julianus) ακουσας τον θανατον του Περτινακος, σπουδῃ ες το γραδιοπεδον παρεγινετο, και πρας ταις πυλαις του τειχους ἐτως, παρεκαλει τους γραδιωτας ὑπερ της των Ῥωμαιων ἠγεμονιας. ὁτι δε και πραγμα αισχιστον τε και αναξιον της Ῥωμης εγενετο. ὡσπερ γαρ εν αγορᾳ και εν πωλητηριῳ τινι, και αυλη και ἡ αρχη αυλης πασα απεκηρυχθη. Dio Caſſ. 73. 11. The whole of this ſingular tranſaction is painted in very lively colors by the noble hiſtorian, who was himſelf in Rome at the ſame time, and appears to have been an active member of the ſenate.

[231] Και ὁ μεν ὑυῖος προς ἐσπειραν ες τι την αγοραν και προς το βουλευτηριον ἠπειχθη, παμπληθεις δορυφορους μιλα σημειων συχνων ὡσπερ ες πραξιν τινα αγων, ἱνα και ἡμας και τον δημον προσπαταπληξας προσθηται.—ἡμεις δε πυνθανομενοι ταυτα, ὡς που ἑκαστῳ διηγγελλετο, εφοβουμεθα μεν τον Ιουλιανον και τους γραδιωτας,—και μαλιστα ὁσοι τι ὁι προς τον Περτινακα επιτηδειοι· και γαρ εγω ἰις εξ αυλων ην (ſays the hiſtorian)—ὁμως δ' ουν και δια ταυτα (ου γαρ εδοκει ἡμιν ασφαλως ειναι, οικοι, μη και εξ αυτου τουτου ὑποκλεισθωμεν, καλαμειται) προηλθομεν, ουχ ὁτι δεδουλωμενοι, αλλα και δεδιπτηκοτες· και ωσαυτως δια των γρατιωτων, ες το βουλευτηριον εισηλθομεν, και ηκουσαμεν αυλου τα τε αλλα αξιως ἑαυτῳ λεγοντος, και ὁτι, &c. Dio Caſſ. 73 12.

[232] "Inde habita concione militari, veſpera in ſenatum venit, totumque ſe ſenatui permiſit, factoque ſenatuſconſulto, imperator eſt appellatus, et tribunitiam poteſtatem, jus proconſulare, in patricias familias relatus, emeruit." Æl. Spart. in D. Jul. 3.

[233] Και ὁ μεν, ὑυῖος την αυλαρχιαν και εκ των της βουλης δογματων βεβαιωσαμενος, αφικετο ες το παλατιον. και ἑυρων το δειπνον το τῳ Περτινακι παρεσκευασμενον, πολλα τε αυτου καθυβρισε, και καταπιμψαμενος, ὁθεν τε και ὁπωσουν ἑυρεθηναι τοτε ηδυνηθη πολυτιμητον, διεπιμπλατο, ενδον ετι του νεκρου κειμενου, και εκυβευεν. Dio Caſſ. 73. 13.

Julian

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Julian was of an antient and reſpectable family, particularly famous for an hereditary knowledge of the law, in which he had himſelf acquired ſome reputation [284]: but, with all theſe endowments, he was of a factious and turbulent diſpoſition, fond of power, eager after change; of diſſolute manners; defiling his advanced age with debaucheries, which he had prudently avoided in his youth; and not more inſatiable in ſcraping up wealth, than profuſe in ſpending it [285]. He is charged likewiſe with being addicted to pride; though, after his elevation to the empire, he behaved with more humility; being affable at his entertainments, generous in his contributions, and moderate in his notions of liberty [286]. But theſe faint traces of virtues are ſet in their true light by a cotemporary hiſtorian, who had a perſonal and perfect knowledge of his character; and who properly aſcribes them to the neceſſity he thought himſelf under of keeping upon good terms with the ſenate, and others in power, by civility and flattery, which he carried to ſo groſs an extreme [287], that no one could place the leaſt confidence in his ſincerity [288].

[284] "Didio Juliano, qui poſt Pertinacem "imperio adeptus eſt, proavus fuit Salvius "Julianus, bis conſul, præfectus urbi, et "juriſconſultus: quod magis eum nobilem "fecit." Æl. Spart. in D. Jul. 1. "Poſt "eum Salvius Julianus rempublicam invaſit; "vir nobilis, et juris peritiſſimus; nepos "Salvi Juliani, qui ſub divo Hadriano *perpetuum* compoſuit *edictum*." Eutrop. 8. 9. "Genus ei pernobile, juriſque urbani præ"ſtans ſcientia." Sex. Aur. Vict. de Cæſ. 19.

[285] "Vir nobilis, juris peritiſſimus, factio"ſus, præceps, regni avidus." Id. ep. 19. "Objecta ſane ſunt Juliano hæc, quod gulo"ſus fuiſſet, quod aleator, quod armis gla"diatoriis exercitus eſſet, eaque omnia ſenex "fecerit, cum antea nunquam adoleſcens "eſſet vitiis infamatus." Æl. Spart. in D. Jul. 9. Ιουλιανος ὁ Διδιος, τα μεν γενος βουλευτικον, τον δε τροπον δεινον ἐχων, χρηματιστης τε απλητος και ακαλυπτης ασελγης, νεωτερων τε αει πραγματων ἐπιθυμητης Dio Caſſ. 73. 11.

[286] "Objecta eſt etiam ſuperbia; cum ille "etiam in imperio fuiſſet humillimus. Fuit "autem contra humaniſſimus ad convivia, "benigniſſimus ad ſubſcriptiones, modera"tiſſimus ad libertatem. Æl. Spart. in D. Jul. 9.

[287] Thus, the morning after his inauguration, "Ubi primum illuxit, ſenatum et "equeſtrem ordinem in palatium venientem "admiſit, atque unumquemque, ut erat "ætas, vel *patrem*, vel *filium*, vel *parentem* "affatus blandiſſimè eſt." Id. ib. 4.

[288] Ιουλιανος δε, ουτω την αρχην ἁρπασας, ανελευθερως τοις πραγμασιν ἐχρητο, δωροδοκων την βουλην και τους τι δυναμενους· και τα μεν ἐπαγγελλομενος, τα δε χαριζομενος, προστυγια τε και προσπαιζει προς τους τυχοντας· ες τε τα θεατρα συνεχως ἐσερχετο, και συμποσια πολλα συνεκρυτει τε, τε συμπαν, ουδεν ὁ, τι ουκ ἐπι θεραπειᾳ ἡμων ἐποιει. ὁ μεντοι και πιθανος ἡν, αλλ' ὡς ακρατῃ τῃ δωροδοκιᾳ χρωμενος ὑποπιστευετο. παν γαρ το ἐξωθεν του εικοτος, κ' ἐφ' χαριζεσθαι τισι δοκῃ, δολερον τοις νουν ἐχουσι νομιζεται. Dio Caſſ. 73. 14.

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Though the caution which he found it neceſſary to adopt reſtrained him from breaking out into any flagrant acts of perſonal tyranny, it is certain, that he was not only a bad governor himſelf, but, what was ſtill more pernicious in its conſequences to the true intereſt of the ſtate, he ſuffered the adminiſtration to fall into the hands of his profligate minions, whom he ought rather to have kept within bounds by his own ſuperior authority[289]. In further proof of the real depravity of his heart, he courted the favor of a diſſolute multitude, by adding to his other titles the name of Commodus; promiſing to revive many of his inſtitutions which Pertinax had aboliſhed, and to reſtore the proſcribed memory of that cruel and deteſtable monſter[290].

A prince raiſed thus ſuddenly, by the mere dint of corruption, without a virtue to qualify him either to do credit to himſelf, or to adorn that eminent ſtation, into which he had violently intruded, had no right to expect any other friends, beyond thoſe who had partaken of his ill-beſtowed bounty. His authority, therefore, ſeems never to have extended further than the circle of the city itſelf, which was kept in awe by a dread of the military force by which he was ſurrounded: but in the more diſtant provinces of the empire, ſeveral other brave and ambitious commanders aſſerted their pretenſions to the imperial purple; and ſoon convinced this mock pageant of majeſty, of the inſignificance of power not founded in the affections of the people. On the approach of Severus towards Rome, he could with difficulty prevail upon the prætorian

289 "Reprehenſum in eo præcipue, quod "eos, quos regere auctoritate ſua debuerat, "regendæ reipublicæ ſibi præſules ipſe fe- "ciſſet." Æl. Spart. in D. Jul. 9.

290 Και αυλοι δι τι τραλιψται τα τι αλλα εμεγαλνον, και Κομμοδον επωνομαζον. Dio Caſſ. 73. 12. "Scripſit in tabulis, *ſe Commodi memo-* "*riam reſtituturum.*" Æl. Spart. in D. Jul. 2. "Multa, quæ Commodus ſtatuerat, "Pertinax tulerat, ad conciliandum favorem "populi, reſtituit." Id. ib. 4.

bands,

bands, now grown contemptible by their vices, and totally enervated by ſloth and debauchery, to face ſo formidable a foe[291]; and thus forſaken of all good men, and reluctantly ſupported by his mercenary friends, he was obliged to convoke the ſenate, and command them to declare his competitor his partner in the empire[292]. This act of ſubmiſſion was followed by a deſertion of all his former dependents, and then, by a decree of the ſenate, to pronounce his depoſition, and conſtitute Severus the ſole Emperor[293]; ſoon after which he ſuffered the fate he juſtly merited[294].

Sept. Severus, A. D. 193.

Septimius Severus, though not a good, was certainly a great, prince; more reſpectable than amiable, more juſt than merciful. His life, both private and public, was regulated by the ſtricteſt principles of honor, as it was then underſtood; but a ſtrong propenſity to cruelty predominated over the whole[295]. A mind ſo formed was not likely to engage the affections, or to recommend him to the

291 "Ipſe autem Julianus prætorianos in "campum deduci jubet, muniri turres: ſed "milites deſides et urbana luxuria diſſolutos, "invitiſſimos ad exercitum militare produxit, "ita ut vicarios operis, quod unicuique præ"ſcribebatur, mercede conducerent." Æl. Spart. in D. Jul. 5. The Greek hiſtorian, who was an eye-witneſs, gives the following ridiculous account of them: Εγι δ' ὁτι και γιλως ἡμας ελαμβανεν. ουδε γαρ οἱ δορυφοροι αξιον τι του τε σωματος και της ταραγγελιας σφιν, ἁτε και ἁβρως διαιταϑαι μεμαϑηκοτες, ἐποιουν. και οἱ εκ του ϛρατικου του εν τῳ Μισηνῳ ναυλοχουντος μεταπεμφϑεντες, ουδ' ὁπως γυμνασωνται ϧθελησαν· οἱ τε ελεφαντες αχϑομενοι τοις πυργοις, ουδ' αυλους ετι τους επιβατας ἐφερον, αλλα και ἐκεινους κατεβαλον. Dio Caſſ. 73. 16.

292 Επει δε ἐκεινος (ſc. Severus) ες την Γαλλιαν αφικετο, και την Ῥαβενναν ακουσι παρειληφει, και ους ἐκεινος επ' αυτον επεμπεν, η πεισειας ὑπερβεβληται, η ειρξοντας των παροδων, προσεχωρουν αυτῳ· οἱ τε δορυφοροι, ὡς μαλιϛα ὁ Ιουλιανος ἐϑαῤῥει, τη τε συνηϑεια των πονων απειθησαντες, και προς την ϕημην της του Σεβηρου παρουσιας δειμῳ ἐξεπλαγησαν· συγκαλεσας ἡμας ὁ Ιουλιανος, κοινωνον αυτῳ της αρχης ἐκελευε τον Σεβηρον ϧηϕισασϑαι. Id. ib. 17. "Quare "meliore conſilio ad ſenatum venit, petiit"que, *ut fieret ſenatuſconſultum de participa*"*tione imperii*. Quod ſtatim factum eſt." Æl. Spart. in D. Jul. 6. Id. in S. Sev. 5.

293 "Brevi autem deſertus ab omnibus "Julianus, et remanſit in palatio cum uno "de præfectis ſuis Geniali, et genero Re"pentino. Actum eſt denique, ut Juliano "ſenatus auctoritate abrogaretur imperium; "et abrogatum eſt; appellatuſque ſtatim "Severus imperator." Id. ib. 8.

294 "Miſſi tamen a ſenatu, quorum cura "per militem gregarium in palatio idem "Julianus occiſus eſt." Id. ib. Ὁ μεν ουν Ιουλιανος ὁϑως εν αυλῃ τῳ παλατιῳ καϑαιρεϑεις ἐφονευϑη. Dio Caſſ. 73. 17.

295 "Vitam ſuam privatam publicamque "ipſe compoſuit ad fidem, ſolum tamen "vitium crudelitatis excuſans." Æl. Spart. in S. Sev. 18.

voluntary

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voluntary choice of a free people: but ſo great was his ſagacity, prudence, and application [296], that, when once elected, they muſt have been unwilling to remove him. His talents were ſo ſingularly adapted to the confuſed ſtate of the empire in thoſe ages, that the ſenate, who well knew the whole turn of his diſpoſition, paſſed this juſt obſervation upon him, "That he ſhould never have been born, "or never die; being, at the ſame time, both too cruel, and too uſe-"ful to the public [297]."

The greateſt part of his reign, which fell little ſhort of twenty years, was occupied in military exploits [298], that were both honorable to himſelf, and ſerviceable to his country, in various regions of the empire; ſo that he had leſs leiſure for the exerciſe of his civil and political talents; though equally qualified to ſhine both in peace and war. On his firſt appearance in Rome, after being proclaimed Emperor, he was extremely liberal in his aſſurances to the ſenate; promiſing them a general indemnity and ſecurity of their perſons, which he not only confirmed with an oath, but likewiſe by a law, that if the Emperor ſhould ever put a ſenator to death, both he and his accomplices, with their children and families, ſhould be declared public enemies to the ſtate; and yet he was himſelf the firſt violator of his own law, by the maſſacre of great numbers [299].

He

[296] Δεινοταῖος ὁ Σεβηρος ἦν, το τε μελλον ακριβως προνοησαι, και το παρον ασφαλως διοικησαι, και παν το κεκρυμμενον ὡ; και εμφανες εξευρειν, παν δε το δυσδιαθετον ὡς και ῥᾳστον εξεργασασθαι. Dio Caſſ. 73. 15. "Acer ingenio, ad omnia quæ in-"tendiſſet, in finem perſeverans." Sex. Aur. Vict. ep. 20.

[297] De hoc ſenatus ita judicavit, "*illum "aut naſci non debuiſſe, aut non mori, quod et "nimis crudelis et nimis utilis reipublicæ vi-"deretur.*" Æl. Spart. in S. Sev. 18.

[298] "Fælix ac prudens, armis præcipue: "adeo, ut nullo congreſſu niſi victor diſceſ-"ſerit: auxeritque imperium, ſubacto Per-"ſarum rege nomine Agarro." Sex. Aur. Vict. de Cæſ. 20. "Fuit bellicoſiſſimus "omnium, qui ante eum fuerant. Id. ep. 20.

[299] Εισελθων δε ὁυλως ενιαπιευσαλο μεν, δια και οι πρωην αγαθοι αυλοκρατορες, προς ἡμας, ὡς ουδενα των βουλευτων αποκλεινῃ και ωμοσε περι τουτου, και το γε μειζον, ψηφισματι κοινῳ αυλο κυρωθηναι προσελλαχει, πολεμιον και τον αυλοκρατορα και τον ὑπηρλησοηλα αυλῳ ες τι τοιουτον, αυλους τε και τους παιδας αυλων, νομιζεσθαι δογματισας. πρωλος μεντοι αυλος τον νομον τυλοι παρεβη, και ουκ εφυλαξε, πολλους ανηλω-

He had given early ſigns of a diſpoſition to polite literature in general [100], but eſpecially to the ſtudy of the law, and the adminiſtration of juſtice; ſo that his favorite amuſement, even while a youth, was to ſeat himſelf in a mock tribunal, ſurrounded with a band of play-mates, armed, in their puerile ſtyle, with the uſual enſigns of office [101]. In times of peace, he devoted all his leiſure to the buſineſs of civil government; beginning the day with inquiring into, and giving directions about, whatever concerned the public tranquillity. He then proceeded to the ſeat of judicature, where he preſided till mid-day with peculiar impartiality and dignity; hearing the litigants with patience, and allowing unlimited liberty to the ſenators, who ſat in judgment with him, to deliver their ſentiments upon the queſtion in iſſue [102].

The reign of Septimius was particularly propitious to the ſcience of the law, his chief favorites and counſellors being ſelected out of that learned order; among which, to the great credit of his diſcernment, were Papinian, Paulus, and Ulpian, three of the moſt rational and upright civilians that ever graced the profeſſion of juriſprudence. But of theſe much more will be ſaid in a ſubſequent part of the preſent work. Under their advice and inſpection he enacted many wiſe and equitable laws [103], for the uſe of the empire

Dio Caſſ. 74. 2. "Fieri ſenatuſconſultum "coegit, *ne liceret imperatori inconſulto ſenatu, occidere ſenatorem.*" Æl. Spart. in S. Sev. 7. "Occidit autem ſine cauſæ dictione "hos nobiles," &c. Id. ib. 13.

[100] "Severus autem præter bellicam gloriam, etiam civilibus ſtudiis clarus fuit, et "literis doctus, philoſophiæ ſcientiam ad "plenum adeptus." Eutr. 8. 9.

[101] "In prima pueritia, priuſquam Latinis Græciſque literis imbueretur, quibus "eruditiſſimus fuit, nullum alium inter "pueros ludum niſi *ad Judices* exercuit; "cum ipſe, prælatis faſcibus ac ſecuribus, "ordine puerorum circumſtante, ſederet ac "judicaret." Æl. Spart. in S. Sev. 1.

[102] Εχρητο δι ὁ Σεβηρος καλαφασει του βιου, ειρηνης ουσης, τοιαδι· επρατλι τι παιλως ηνλος ὑπο τον ορθρον, και μελα τουτ' εβαδιζε, και λεγων και ακουων τα τη αρχη προσφορα· ειτ' εδικαζε, χωρις, ει μη τις δοξη μεγαλη ειη· και μειλον και αριστα αυλο επρατλε. και γαρ τοις δικαζομενοις ὑδωρ ικανον ενηχει, και ἡμιν τοις συνδικαζουσιν αυλῳ παρρησιαν πολλην εδιδου εκριν δι μεχρι μεσημβριας. Dio Caſſ. 76. 17.

[103] "Legum conditor longe æquabilium." Sex. Aur. Vict. de Cæſ. 20.

at

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at large; and ſome likewiſe for the government of the Britiſh dominions, where he reſided for the laſt four years of his life; kept his court, and adminiſtered juſtice at York, having the excellent Papinian for his aſſeſſor; and ended his days in that capital [304]. Divers of theſe laws were afterwards adopted by Juſtinian, and have been honored with a place in his Digeſt and Code. It is likewiſe very probable, that the numerous principles of the civil law, which prevailed, in very early ages, over the greateſt part of this iſland, eſpecially over the northern provinces, derived their force from the immediate authority of our antient Roman maſters; and, perhaps, chiefly from the Emperor of whom we are now ſpeaking, who lived much longer in the country, knew more of its nature, and was more attentive to its civil eſtabliſhment, than any other of his predeceſſors. Many traces of the ſame laws were preſerved, and became gradually blended with the inſtitutions of the other continental invaders, long before the celebrated revival of the whole ſyſtem throughout Europe in the twelfth century; which cannot, therefore, be ſo properly referred to any other origin, as to the policy of Severus: a poſition, we ſhall hope, in due time, to eſtabliſh more fully to the ſatisfaction of the reader.

This prince, though crowned with military glory, had the misfortune to find the comfort of his latter days diſturbed by the fatal diſſenſions among his progeny, and by attempts even from thence againſt his own life [305]. But theſe mortifications contributed little towards ſoftening the rigor of his nature; as his dying advice to his ſons, "to agree among themſelves, to enrich the ſoldiery, and

[304] "Neque multo poſt Britanniæ muni-
"cipio, cui Eboraci nomen, annis regni
"duodeviginti morbo extinctus eſt." Sex. Aur. Vict. de Cæſ. 20.

[305] Κ᾽αν τῳ καιρῳ τουτῳ, τῃ τε σιγῃ και τῳ κοσμῳ του ἱππου ὁ Αὐγουστος αναχαιτισας, ισπασαιτο το ξιφος, ὡς και κατα νωτου τον πατερα παλαιων. Dio Caſſ. 76. 14. The whole of this tranſaction, as related by the hiſtorian, does great honor to the reſolution of Severus, as a man; and to his tenderneſs, as a father.

"despise the rest of the world[306]," shews what little weight the general welfare of the empire bore in his affections, when set in opposition to the interest of his own aspiring family. And yet, after the vast tide of success which accompanied his arms, he both lived and died discontented; peevishly declaring, when arrived at the summit of his power, that "he had passed through every station of life, but "found satisfaction in nothing[307]."—Thus unhappily must the proudest monarchs of the universe both live and die, when destitute of the comfort of virtue and religion, to support them under the disappointments of the world; to give them a just relish for the blessings of it; and to aid them in their final conflict with the king of terrors.

Caracalla, A. D. 211.

The whole that will be necessary to say of his son and successor, M. Aurelius Antoninus Bassianus, better known in history by the surname of Caracalla, is, that his whole reign was a continued scene of the most frantic violence and cruelty; begun with the murder of his own brother, and carried on with the extirpation of every person of merit and honor, that came within the reach of his unsparing sword[308]. Having been suffered to remain too long the dread and pest of mankind, he was at last murdered by Macrinus, the captain of the guards; who first usurped his throne, and then repaired the injury, by granting him a place among the gods[309].

[306] Πριν γουν μεταλλαξαι, ταδι λεγεσθαι τοις παισιν ειπειν· (ερω γαρ αυτα τα λεχθεντα, μηδεν ὁ, τι καλλωπισας) "Ὁμονοειτε, τους στρατιωτας πλουτιζετε, των αλλων παντων καταφρονειτε." Dio Cass. 76. 15.

[307] "Hujus dictum est, cum eum ex humili per literarum et militiæ officia ad imperium plurimis gradibus fortuna duxisset, "omnia, inquit, *fui, et nihil expedit.*" Æl. Spart. in S. Sev. 18.

[308] Ὁ δε Αντωνινος, τυ πατρος αποθανοντος, λαβομενος εξουσιας, ενθυς εφ' ἑτιας πασας φονευειν ηρξατο. Herod. 3. 50. edit. Oxon. 1678. Της τε συγκλητυ βυλης ὁσοι γενει η πλυτῳ ὑπερεχον, επι βραχυταταις η ουδ' ὑφεστωσαις αιτιαις, εκ της τυχουσης διαβολης ὡς εκεινου φιλοι ανηρουντο. Id. 4. 11.

[309] "Hic tamen omnium durissimus, et, "ut uno complectamur verbo, parricida et "incestus, patris et matris et fratris inimicus, a Macrino, qui eum occiderat, timore "militum, ac maxime prætorianorum, inter "Deos relatus est." Æl. Spart. in Car. 11.

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Macrinus, A. D. 217.

Opilius Macrinus was a perſon of low origin, of a baſe mind and mean perſon[310]; proud and ſanguinary; fond of military power[311]; and received as Emperor by the fathers, from no other principle, than that of hatred to Caracalla; "thinking any one better than "a parricide, than an inceſtuous and libidinous monſter, the ge-"neral aſſaſſin of the ſenate and people[312]." This contemptible old man was almoſt blind with age; ſo illiterate, that he could not read; and ſo utterly unexperienced, that he was incapable of tranſacting any buſineſs whatever[313]. From a governor ſo profoundly ignorant, it would be in vain to expect any improvements in the political ſtate of the empire: but had he confined himſelf to his military department; had he ſelected a proper perſon out of the ſenate, and ſupported him in the throne by his power, inſtead of uſurping it himſelf, he might have deſerved the praiſes of all good men, and have avoided the fate of his predeceſſor, which ſo ſpeedily overtook him[314].

Heliogabalus, A. D. 218.

The adminiſtration (if it can be ſo called) of Heliogabalus was a ſeries of every kind of vice and effeminacy[315], that could debaſe the noble ſoul of man, and render him more vile and contemptible than

[310] "Humili natus loco, et animi atque "oris inverecundi." Jul. Cap. in Op. Macr. 2. Ὁ δὲ δὴ Μακρῖνος, τὸ μὲν γένος Μαῦρος, ἀπὸ Καισαρείας, γονέων ἀδοξοτάτων ἦν, ὥστε καὶ σφόδρα εἰκότως αὐλὸν τῷ ὀνῷ, ἐς τὸ παλάτιον ὑπὸ τοῦ δαιμονίου ἐσαχθέντι, εἰκάσθηναι. Dio Caſſ. 78. 11.

[311] "Fuit igitur ſuperbus et ſanguinarius, "et volens militariter imperare." Jul. Cap. in Op. Macr. 12.

[312] "Quamvis ſenatus eum imperatorem "odio Antonini Baſſiani libenter acceperit, "cum in ſenatu omnibus una vox eſſet: *quem-"vis magis quam parricidam, quemvis magis "quam inceſtum, quemvis magis quam impurum, "quemvis magis quam interfectorem et ſenatus "et populi.*" Jul. Cap. in Op. Macr. 2. Οὐχ οὕτω δὲ εὐφραίνει παῖδας ὁ Μακρῖνος διάδοχος, ὡς ὑπερηδόμενοι τε καὶ παιδήμασι χορτάζον ἐπὶ τῇ Ἀντωνίνου ἀπαλλαγῇ. Herod. 5. 2.

[313] Μηδ' ὁρᾶν ὑπὸ γήρως, μήτ' ἀναγινώσκειν ὑπ' ἀπαιδευσίας, μήτε πρᾶξίν τι ὑπ' ἀπειρίας δύναμιν. Dio Caſſ. 78. 14.

[314] Ὁ μὲν ἐπῃνέθη ἂν ὑπὲρ πάντας ἀνθρώπους, εἰ γε μὴ αὐτὸς αὐτάρχησαι ἐπεθύμησεν, ἀλλ' ἐπιλεξάμενός τινα τῶν ἐς γε τὴν γερουσίαν τελούντων, τῆς τῶν Ῥωμαίων ἀρχῆς προστάτησαι, αὐτοκράτορα αὐλὸν ἀπεδείξει. Id. ib. 41.

[315] "Impudiciſſime et obſcœniſſime vixit." Eutr. 8. 12.

the

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the brute creation. As nothing occurs during this ſhort period, that can give the leaſt ſatisfaction to a rational mind, or contribute to illuſtrate the particular ſubject of our inquiry, we ſhall joyfully paſs over to his incomparable ſucceſſor; under whoſe gentle influence the beams of political wiſdom and orderly legiſlation once more broke forth from thoſe clouds, by which they had been ſo long obſcured; and, for a while, diffuſed tranquillity and happineſs over this diſtracted government.

Alexander Severus, A. D. 222.

Both the army and ſenate united in the nomination of Aurelius Alexander; and complimented him with the uſual titles of inauguration[316]. This youth, though not then quite fourteen years old, diſplayed a bright aſſemblage of uncommon virtues, that would have been an ornament even to the prime of manhood; and in the midſt of a debauched, voluptuous and degenerate age, ſtood forth a perfect example of modeſty, wiſdom and piety[317]. The tender affection of a careful and diſcerning mother had placed him in the hands of the ableſt præceptors; who cultivated his mind with ſo much aſſiduity, and inſtilled into him ſo early a taſte for all branches of learning, both civil and military, that, young as he was, he never paſſed even a day, by his own good will, without making ſome advances toward the improvement of his underſtanding[318]. To guard againſt the dangerous impreſſions of licentious company, ſhe ſuffered none to approach him but thoſe of the moſt approved

[315] "Succeſſit huic Aurelius Alexander; "ab exercitu Cæſar, a ſenatu Auguſtus nominatus: juvenis admodum." Eutr. 8. 13. "Interfecto Vario Heliogabalo,—ad "remedium generis humani Aurelius Alexander—accepit imperium; cum ante Cæſar a ſenatu eſſet appellatus." Æl. Lamp. in Alex. Sev. 1.

[317] "Erat cunctis hominibus amabilis: et "ab aliis pius appellabatur: ab omnibus "certe ſanctus et utilis reipublicæ." Id. ib. 4.

[318] "A primâ pueritiâ artibus bonis imbutus, tam civilibus quam militaribus, ne "unum quidem diem ſponte ſuâ tranſire "paſſus eſt, quo non ſe ad literas et ad militiam exerceret." Id. ib. 3. Ἡ μεν τοι διοικησις των πραγματων, και ἡ της αρχης οικονομια ὑπο ταις γυναιξι διῳκειτο, επι τον το σωφρονεστερον και σεμνοτερον παιδα μαλαγιων επειρωλο. Herod. 6. 1.

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morals[319]. And not even to allow him time for the practice of vice, ſhe perſuaded him to give a cloſe attendance to the courts of juſtice, and to other arduous affairs of government[320]; wherein he was aſſiſted by the ableſt perſons that could be ſelected out of the ſenate; and among the reſt, by the celebrated Ulpian, who had before been diſtinguiſhed by the friendſhip and confidence of Septimius Severus; and, for his wiſdom and integrity, was called the Cato of the age[321].

On aſcending the throne he refuſed the title of *Lord*, contenting himſelf with that of *Emperor*, and deſiring to be addreſſed only as one of the ſenators[322]. This prohibition, however, did not prevent them from immediately ſaluting him with the names of Auguſtus, and Pater Patriæ; nor from beſtowing upon him the proconſular and tribunitian power, together with the right of making five motions in one day; honors, which, heretofore, it was neither conſiſtent with the dignity of the ſenate to grant all at once, nor with a good prince to covet. The hiſtorian, therefore, thinks himſelf under a neceſſity of apologizing for the precipitate conduct of this high aſſem-

[319] Ἡ δὲ Μαμμαια, μονη τῳ παιδι καλαλειφθεισα, ὁμοιως αυτῳ αρχειν τι και κρατειν επειρατο· ηδη τε ὁρωσα ες αρχην τον νεανιαν γενομενον, και διδοικυια, μη αρα ἡλικια ακμαζωσα, ὑπηρετησης αδειας τε και ἐξουσιας, ες τι των γενικων ἁμαρτηματων ἐξοκειλη, παθαχοθεν ἐφυρει την αυλην. ἠδε τινα εια προσιεναι τῳ μειρακιῳ των επι Φαυλωι διαβεβλημενων, μη πως το ηθος διαφθαρειη, προκαλεσαμενων αυτου των κολακων τας ορεξεις ακμαζουσας ες αισχρας επιθυμιας. Herod. 6. 2.

[320] Δικαζειν τε ὡν αυτον επειθε συνεχεσθαι και επι πλειστον της ἡμερας· ὡς αν ασχολουμενος περι τα πρεπωδεστατα και τῃ βασιλειᾳ αναγκαια, μη ἐχοι καιρον ες το επιτηδευειν τι των ἁμαρτηματων. Herod. 6. 3.

[321] Ἡ (sc. ἡ μητηρ Μαμαια) την των πραγματων οικονομιαν μετακειριζετο, και περι τον υἱον σοφους ανδρας συνηγαγεν, ἱνα δ' ἐκεινων αυτῳ τα ηδη ῥυθμιζοιτο· καὶ ἐκ της γερουσιας, τους ἀμεινονας συμβουλους προσειλετο, ἁπαν πρακτεον κοινουμενη αυτοις. Δομιτιῳ δὲ τινι Ουλπιανῳ την τε των δορυφορων προστασιαν, και τα λοιπα της αρχης ἐπετρεψε πραγματα. Dio Caſſ. 80. 1. "Cato temporis ſui, Do- "mitius Ulpianus juriſperitiſſimus." Æl. Lamp. in Al. Sev. 68. Πρωτον μεν της συγκλητου βουλης, της δοκιμοτατης και ἡλικιᾳ σεμνοτατης, και βιῳ σωφρονεστατῳ, ἐκκαιδεκα ἐπελεξατο, συνεδρους εἰναι και συμβουλους του βασιλεως. οὐδε τι ἐλεγετο ἡ ἐπρατετο, ει μη κ' ἀκεινοι αυτο ἐκκρινειαν, συμψηφοι ἐγενοντο, ἠρεσκε τε τῳ δημῳ, και τοις στρατοπεδοις, ἀλλα και τῃ συγκλητῳ βουλῃ, το σχημα της βασιλειας, ἐκ τυραννιδος ἐφυβριστου ες αριστοκρατιας τυπον μετενεχθεισης. Herod. 6. 1.

[322] "*Dominum* ſe appellari vetuit. Epiſtolas "ad ſe quaſi ad privatum ſcribi juſſit, ſer- "vato tantum nomine Imperatoris.—— Sa- "lutaretur vero quaſi unus de ſenatoribus." Æl. Lamp. in Alex. Sev. 4.

bly

bly upon the preſent occaſion, by ſaying, that as the army had often uſurped the practice of conferring many of theſe titles and privileges in a haſty and tumultuous manner, pretending to be ignorant that the ſenate had already done it, they were now willing to anticipate them in the compliment [323]. Not that he was ambitious of theſe titulary honors; on the contrary, he ſtrenuouſly perſiſted in refuſing any other than what had been given him on his acceſſion: but having ſhewn a ſingular fortitude and ſpirit in oppoſing the inſolence of the army, the ſoldiers gave him the name of *Severus*; which, as it aroſe from the exerciſe of a popular virtue, procured him great reverence in the eyes of his cotemporaries, as well as glory with poſterity; he being the only prince upon record, who had had the courage to caſhier a tumultuous army [324].

Like a true patriot prince, he conſidered the ſupreme authority wherewith he was inveſted, as a truſt only for the benefit of his country; which it was his duty to exerciſe for that purpoſe, with firmneſs, judgment, and impartiality. Wiſhing to ſtrike at the root of the prevailing abuſes of the times, he undertook to reform the great legiſlative body of the ſtate, and to reſtore its antient reputation and dignity, by an extreme circumſpection in the choice of its members;

[323] —"addito eo ut et Patris Patriæ nomen, et jus proconſulare, et tribunitiam poteſtatem, et jus quintæ relationis, deferente ſenatu, uno die aſſumeret. Et ne præceps iſta honorum continuatio videatur, exponam cauſas quibus id et ſenatus coactus eſt facere, et ille perpeti. Non enim aut gravitati ſenatus congruebat omnia ſimul deferre, aut bono principi raptim ire tot ſimul dignitates. Milites jam inſueverant ſibi imperatores et tumultuario judicio facere, et item facile mutare, afferentes nonnunquam ad defenſionem, ſe idcirco feciſſe, quod neſciſſent ſenatum principem appellâſſe." Æl. Lamp. ib. 1.

[324] "Multo clarior viſus eſt alienis nominibus non receptis, quam ſi recepiſſet.—Sed quamvis ſenatu rogante non potuerit perſuaderi, ut vel Antonini vel Magni nomina ſuſciperet, tamen ob ingentem vigorem animi, et mirandam ſingularemque conſtantiam contra militum inſolentiam, *Severi* nomen a militibus inditum eſt, quod illi ingentem reverentiam, magnam apud poſteros gloriam peperit; cum eo acceſſiſſet, ut de animi virtute nomen acceperit: ſiquidem ſolus inventus ſit, qui tumultuantes legiones exauctoravit." Æl. Lamp. in Al. Sev. 12.

and

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and by never ſuffering any to be admitted to a ſeat in that auguſt aſſembly, without the unanimous approbation of his council, ſupported by ample teſtimonies of their qualifications[325]. He likewiſe enacted many laws for the ſecurity of the general rights of the people; as well as others, to regulate the claims of the exchequer; all of which, however they might affect his own intereſt, were of a very moderate tendency; and were never paſſed without the advice of the moſt expert lawyers of the age[326].

But, above all, let it be remembered to the eternal honor of the Chriſtian religion, that the perfection of this prince's virtues; the innocence of his life; the purity of his morals; his active zeal for the good of his people; his mercy and benevolence to all mankind; novelties long unknown to the imperial throne of Rome; may in a great meaſure be aſcribed to the golden rule of the Goſpel, "of "doing as he would be done by:" a rule by which he not only regulated his own conduct, but took care to inforce the obſervance of it upon others. When he ſaw any one committing a treſpaſs upon another's land, he cauſed him to be corporally puniſhed, according to his reſpective quality; always rebuking him by this queſtion; "would you like to have another do in your field what "you do in his?" This rule he had conſtantly in his own mouth, and cauſed it to be proclaimed by the common cryer, at the inſtant he was endeavouring to reform an offender; holding it in ſuch high reverence, as to have it inſcribed upon the front of his palace, and of other public edifices[327].

From

[325] "Senatorem nunquam ſine omnium "ſenatorum qui aderant conſilio fecit, ita "ut per ſententias omnium crearetur, "teſtimonia dicerent ſummi viri." Æl. Lamp. ib. 19.

[326] "Leges de jure Populi et Fiſci mo- "deratas et infinitas ſanxit; neque ullam "conſtitutionem ſacravit ſine viginti juriſ- "peritis et doctiſſimis ac ſapientibus viris." Id. ib. 16.

[327] "Si quis de via in alicujus poſſeſſionem "deflexiſſet, pro qualitate loci, aut fuſtibus "ſubjiciebatur in conſpectu ejus, aut virgis, "aut condemnationi; aut, ſi hæc omnia "tranſiret

From hence it may be reaſonably concluded, that, though not a convert to Chriſtianity, he was no ſtranger to its moral excellences; and that the knowledge he had of them, imperfect as it was, made him both a better man, and a better governor. Enamoured with the benevolence of its doctrines, he became its avowed friend and protector; and propoſed to erect a temple to the honor of its divine author, in imitation of thoſe which Hadrian had formerly founded, without images, in every city. This deſign he certainly would have executed, had he not been diſſuaded by ſome crafty adherents to the antient ſuperſtition; who, under pretence of having conſulted the auſpices, foreſaw that the propoſed toleration of a religion of ſuch ſuperior purity, muſt end in its univerſality; cauſing their own temples to be deſerted, and their falſe deities to be ſet at naught [328].

Theſe ſingular anecdotes clearly point out another ſource of that inveterate rancor which had ſo long, and ſo univerſally, prevailed againſt the profeſſors of Chriſtianity. A religion, which taught man to know himſelf, and the great end of his creation; which inforced the obſervance of the moral and ſocial duties, and gloried in the ſimplicity of its ceremonies; could not fail to rouze the jealouſy, and humble the pride, of the vain philoſophers and haughty diſputants of the world; nor leſs to mortify the avarice of the ſelf-intereſted miniſters, and inferior retainers of idolatry; and make them tremble for the decline of that lucrative traffic, which they derived from the folly and ignorance of its bigotted votaries. A con-

" tranſiret dignitas hominis, graviſſimis " contumeliis; cum diceret, *Viſne hoc in " agro tuo fieri, quod alteri facis?* Clama- " batque ſæpius, quod a quibuſdam ſive " Judæis, ſive Chriſtianis audierat, et tene- " bat; idque per præconem, cum aliquem " emendaret, dici jubebat, *Quod tibi fieri non " vis, alteri ne feceris.* Quam ſententiam " uſque adeo dilexit, ut et in palatio et in " publicis operibus præſcribi juberet." Æl. Lamp. in Al. Sev. 51.

328 " Chriſto templum facere voluit, eum- " que inter Deos recipere, quod et Hadri- " anus cogitâſſe fertur, qui templa in omni- " bus civitatibus ſine ſimulacris juſſerat fieri: " quæ hodie idcirco quia non habent numina, " dicuntur *Hadriani*, quæ ille ad hoc pa- " râſſe dicebatur: ſed prohibitus eſt ab iis " qui conſulentes ſacra, repererant omnes " Chriſtianos futuros ſi id optato eveniſſet, " et templa reliqua deſerenda." Id. ib. 43.

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ſpicuous example of this ſelfiſh zeal is preſerved in the hiſtory of the tumults at Epheſus; on which occaſion the private emoluments of particular craftſmen were urged as ſolemn arguments againſt the reception of the divine truths delivered by the apoſtle [329].

But theſe religious prejudices were not peculiar to the ages of Chriſtianity. They had long before been levelled, with every horrid circumſtance of violence and barbarity, againſt the Jews, who were equally zealous in their worſhip of the unity of the Godhead; from the noble captives in Babylon, under Nebuchadnezzar [330], to the heroic matron and her ſeven ſons, before the tribunal of Antiochus Epiphanes [331]. Theſe artificial and ſtudied cruelties, naturally coinciding with the ferocious humour and ſavage ſuperſtition of the Roman tyrants, readily ſerved as precedents againſt thouſands of Chriſtian martyrs, whoſe innocent blood was openly and wantonly ſhed in the face of the world, through every region of the empire; and whoſe unmerited ſufferings will perpetuate the infamy of their perſecutors, and defy the acuteſt wit of the moſt determined infidel to ſhake their teſtimony.

It is very poſſible, that the accounts of theſe butcheries may have been exaggerated; but, without inſiſting upon the multitude of victims, inſtances will always remain, more than ſufficient to prove the open avowal, and actual prevalence, of this malicious and deſtructive ſpirit of perſecution; and that a general liberty of conſcience was no more a principle of the religious ſyſtem of antient, than of modern, Rome. In truth, ſuch as have ſince been the bloody rulers of that mercileſs church, ſuch likewiſe were too many of the Roman princes of old; thoſe renowned and accompliſhed champions of Polytheiſm, ſo highly extolled for the liberality of its tenets, and the elegance of its ceremonies [332].

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329 Acts xix. 23. et ſeq.
330 Dan. iii. & vi.
331 Maccab. ii. 7.

332 Painful as the recollection of ſuch barbarities muſt be to every feeling heart, it may not be improper to obſerve, that, of all the various

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The early age at which Alexander came into poſſeſſion of the throne; his complacent manners, and equitable ſway, afforded every reaſonable expectation of univerſal happineſs to the people, as well as of an ample reparation of their blaſted honors. But Providence, in whoſe hands is the fate of nations, having other important and unſearchable deſigns in view, incompatible with the exiſtence of this once-glorious empire, was pleaſed ſuddenly to caſt down this fair pillar of its hopes, when juſt brought to the height of its ſtrength and beauty. That fatal ſtroke was immediately ſucceeded by a ſeries of tumult, treaſon, and maſſacre, which continued to the end of the century; and of which a parallel is hardly to be found in the annals of any civilized country from the beginning of time. The

various modes of torture invented by theſe chief miniſters of the great enemy of mankind, *fire* was one of the moſt univerſal, and particularly in thoſe caſes where religion had any concern. This practice is ſuppoſed to have been in the eye of the Pſalmiſt, in the following exclamation: "Thou ſhall make them "like a *fiery oven* in the time of thy "wrath." Pſ. xxi. 9. Lowth on Dan. iii. 6. Thus the two impoſtors were puniſhed by Nebuchadnezzar, of whom the prophet ſpeaks: "And of them ſhall be taken up a "curſe by all the captivity of Judah which "are in Babylon, ſaying, The Lord make "thee like Zedekiah and like Ahab, whom "the King of Babylon *roaſted in the fire*." Jer. xxix. 22. The Syrian tyrant, after many bloody experiments, tried upon the piety and conſtancy of the eldeſt of the Jewiſh young men, "When he was thus maimed "in all members, commanded him, being "yet alive, to be brought to the *fire*, and to "*fried in the pan*." Maccab. vii. 5. The exact counterpart of theſe diabolical cruelties was frequently repeated in the times of the Diocletian perſecution; which horrid proceſs is thus minutely deſcribed by a writer of the ſame age: "Dignitatem non habentibus "pœna *ignis* fuit, et exilii primo adverſus "Chriſtianos permiſerat, datis legibus, ut "poſt tormenta damnati *lentis ignibus ure-* "*rentur*. Qui cum deligati fuiſſent, ſub- "debatur primo pedibus *lenis flamma*, tam- "diu donec callum ſolorum contractum igni "ab oſſibus revelleretur. Deinde *incenſæ* "*faces*, et extinctæ admovebantur ſingulis "membris, ita ut nullus locus in corpore "relinqueretur intactus. Et inter hæc ſuffun- "debatur facies aqua frigida, et os humore "abluebatur, ne areſcentibus ficcitate faucibus "cito ſpiritus redderetur; quod poſtremo acci- "debat. Tunc per multum diem decocta om- "ni cute, *vis ignis* ad ima viſcera penetrâſſet. "Hinc *rogo facto cremabantur*. Corpora jam "*cremata*, lecta oſſa et in pulverem com- "minuta jactabantur in flumina ac mare." Lact. de Mort. Perſec. c. 21. edit. Traj. ad Rhen. 1693. On ſome occaſions, whole companies of people, of all ages and ſexes, were conſumed in one general conflagration. "Comprehenſi preſbyteri ac miniſtri, et "ſine ulla probatione ad confeſſionem dam- "nati, cum omnibus ſuis deducebantur. "Omnis ſexus et ætatis homines ad *exuſtio-* "*nem* rapti. Nec finguli, quoniam tanta "erat multitudo, et gregatim *circumdato* "*igni* ambiebantur." Ib. c. 15. Many more inſtances to the ſame effect might be produced, from other credible authors of thoſe times, did not the mind revolt at ſo horrid a detail.

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laws no longer preſerved their juſt authority; the terrors of the capital were diſregarded; confuſion and diſobedience ſuſpended the powers of government at home; and revolt, rebellion, and defiance threatened the utter extinction of it from abroad.

CHAP. VI.

An Inquiry into the Nature and Extent of the "Lex Regia."

THE deſign of the foregoing chapter was to ſhew the various appearances and effects of the imperial power, in the hands of the ſucceſſive princes for the two firſt centuries after its eſtabliſhment; and how far it was extended, reſtrained, or moderated, according to the different tempers and diſpoſitions of thoſe by whom it was reſpectively exerciſed. It is now time to take a nearer view of this famous ſuppoſed act of the legiſlature, from whence it is ſaid to have derived its immediate origin and authority.

The unlimited and extraordinary powers occaſionally conferred upon Auguſtus by the conceſſions of the ſenate and people; or extorted from them, with ſtronger circumſtances of violence, by his more arbitrary ſucceſſors; have given birth to the common opinion, that the conſtitution was made deſpotic, and that the abſolute ſovereignty was annexed for ever to the imperial title, by a declarative act of the ſtate, uſually called the "Lex Regia:" by which law, as it is recited by Juſtinian[1], ſome expect us to believe, that the people wilfully relinquiſhed all their antient conſtitutional rights, more eſpecially that of legiſlation; and transferred them with one accord into the hands of the Emperor, in the moſt ample and accumulative manner that language can expreſs.

[1] "Sed et quod principi placuit legis habet vigorem: quum *Lege Regia*, quæ de ejus imperio lata eſt, populus ei et in eum omne imperium ſuum et poteſtatem concedat." I. 1. 2. 6. The ſame is preſerved, without any material variation, in D. 1. 4. 1. pr. And again, "Lege antiqua, quæ *Regia* nuncupatur, omne jus omniſque poteſtas populi Romani in imperatoriam tranſlata ſunt poteſtatem." C. 1. 17. 1. 7.

The origin of this law is, by moſt modern writers, referred to the age of Auguſtus; though it is a circumſtance well worthy of obſervation, that no ſuch law either now does, or was ever known to have exiſted; and that neither the name of Auguſtus, nor of any other particular prince, is once mentioned by Juſtinian in the paſſages here cited; ſo as to enable us to determine, with any degree of certainty, in whoſe favor, or upon what occaſion, it was enacted. A law, which at once would have totally changed the face of the Roman conſtitution, and have annihilated a power, that, with little interruption, had reſided in the collective body of the people, for the five centuries immediately preceding, muſt have been a phænomenon in politics, too remarkable to have eſcaped the notice of the moſt inattentive and ſuperficial annaliſt. And yet it is certainly true, that not even the moſt accurate and beſt informed hiſtorians, who lived the neareſt to thoſe times, have left us any reaſon to ſuppoſe that they ever had the leaſt knowledge of ſuch an act of the legiſlature.

As it has ſo little foundation in fact, it has ſtill leſs in probability. Auguſtus, with all his moderation, would hardly have rejected ſo ſubſtantial a compliment, when unanimouſly made him by the whole people; or have failed to cauſe a law, which would at once have ſecured independency to himſelf and his ſucceſſors, to be recorded as ſpeedily as poſſible, and to be authenticated with every public mark of notoriety. But, in truth, it was contrary to the profeſſed policy of this wiſe prince ever to aſpire to any ſuch ſtate of dangerous pre-eminence. His uniform principle was to avoid all invidious marks of ſovereignty, and to preſerve (as we have already abundantly ſeen) every exterior appearance of the antient commonwealth. The old republican ſpirit was now indeed much broken and depreſſed; but the lion, though aged and infirm, might

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awake from his ſlumbers; and had ſtill vigor and courage enough remaining, to ſtartle and revolt at the name of King, and to betray his natural antipathy to every thing that ſavoured of the regal dignity. Mæcenas indeed adviſed him to aſſume a ſhare of legiſlative power to himſelf; but ſtill upon condition of not exerciſing that power, without conſulting with the firſt perſons of the ſenate[a]: which advice he always very carefully followed.

His ſucceſſors, though of characters too often the direct reverſe of his own, and with very little concern for the real intereſts of the people, wanted not penetration to diſcern, that the genius of Rome, even in the ſtate of debaſement ſhe then was, would not look with patience upon the gaudy pageantry of abſolute monarchy. They contented themſelves therefore with the more modeſt appellation of *Imperator*, which they were at liberty to aſſume and repeat as often as they pleaſed; and by thus appearing to prefer military glory to civil power, they flattered the high ſpirit of a warlike people, without alarming their apprehenſions; they even affected to be worſhipped as gods, when they declined the title of kings. If then there was ſuch magic in a ſingle word, as to diffuſe terror and diſguſt through the minds of ſo many millions, it is not to be ſuppoſed that a law, bearing ſo invidious a mark, could ever have been received by them with any degree of approbation, much leſs of obedience.

The moſt rational way, therefore, of accounting for the riſe and growth of this very univerſal error, is from that ſurpriſing concurrence of fortunate circumſtances, which placed Octavius at the head of the Roman world. The people, wearied out with the ſtruggles of oppoſite factions, and with the oppreſſions of an inſolent and overbearing ariſtocracy, were eager to fly for protection to the arms

[a] Ἵνα καὶ νόμος ἐιδυς ἢ παρ᾽ ὁ, τι ἂν βουλευσαμένη σοι μετα των ὁμοτιμων ἀρεσῃ. Dio Caſſ. 52. 15.

of

of a young conqueror, who, by his wiſdom, proweſs, or good fortune, had obtained a deciſive ſuperiority over all his competitors; who was now able to quell theſe tumultuous ſpirits, and to reduce them all to a more reaſonable level. Finding that he had both the will and the power to inſure to them the bleſſings of peace, which their diſtracted ſtate had ſo long panted after, they were, perhaps, not leſs glad to throw the burden of the government upon his ſhoulders, than he might be to take it up. He became their ſovereign, therefore, even by the very exigencies of the times; and by prudently aſſociating himſelf with all the other public magiſtrates in their turns; by treating them as his colleagues in office, and by affecting no greater ſhare in the adminiſtration than themſelves, he was in fact a king, without aſſuming any determinate title whatever [3]. Thus by coveting nothing, he obtained all; and made it the intereſt of the people to grant, what would have been very impolitic in himſelf to demand. Well convinced that he was not diſpoſed to abuſe their confidence, they daily ſtrengthened his hands by new conceſſions, till they had hardly left themſelves any further favors to beſtow [4].

"Thus," according to the account of a well-informed hiſtorian [5], "the whole power both of the ſenate and people, was transferred "to Auguſtus; and though ſometimes two or three others enjoyed

[3] To the ſame purpoſe ſays the hiſtorian of the Emperors in general, Ουτως εκ τουτων των δημοκρατικων ονοματων, πασαν την της πολιτειας ισχυν περιβεβληται. ωστε και τα των βασιλειων, πλην τω φορτικω της προσηγοριας, αυτων, εχειν. Dio Caſſ. 53. 18.

[4] Ταυτα μεν εκ της δημοκρατιας, ως που και εκαστα νομισθη, ουτω τε και δια τουτων των ονοματων ειληφασιν, οπως μηδεν ανευ δοσεως τινος εχειν δοκωσιν. Id. 53. 17.

[5] The whole of this paſſage is ſo very remarkable, that it is well worth while to conſider it as it ſtands in the original. Dio Caſſ. 53. 17. Ουτω μεν δη το, τε τω δημω και το της γερουσιας κρατος παντες των Αυγουστον μετηκ. . . . μοναρχια γαρ, ει και τα μαλιστα και δυο και τρεις αμα το κυρος ποτε ισχον, αληθεστατα αν νομιζοιτο. το μεν γαρ ονομα αυτο το μοναρχικον ουτω δη τι οι Ρωμαιοι εμισησαν, ωστε μητε δικτατωρας, μητε βασιλεας, μητ' αλλο τι τοιουτο προτερον της αιδιαματορας, σφων ονομαζειν· του δε δη της πολιτειας τελους ες αυτους ανακειμενου, ουκ εστιν οπως ου βασιλευονται. . . . διαγεται δε και διοικειται παντα απλως, οπως αν ο εις κρατων εθελησῃ. και ουκ εστι μεν ου μοναρχια, αλλ' εκ των νομων τουτ' εχειν δοκωσι, παντ' οντα εν τη δημοκρατια μεγα παρ' εκουσι σφισιν ισχυσειν, αυτοις τοις ονομασι, χωρις τω της δικτατωριας, προσποιησαντο.

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" it in conjunction with him, yet the government was in effect a " monarchy. It is true that the Romans held the name in ſuch " deteſtation, that they would not bear the title of Dictator; but as " the actual direction of all ſtate affairs was in the hands of the " Emperor, it was not poſſible for him to be, really, any other " than king. Every thing was ordered according to his will; but " that he might not appear to derive it ſo much from ſuperior force, " as from the law of the land, every office of the greateſt authority " under the republic, was aſſumed by him, with the conſent of the " ſenate and people, except the dictatorſhip."

The tribunate, among the reſt, which was always held ſacred and uncontroläble, even under the higheſt meridian of liberty, was now become one of the moſt dangerous ſnares. The people could not eaſily object to the exerciſe of that power, which they themſelves had ſo often uſed with ſuch unbounded licence; the Emperors therefore, and particularly Auguſtus, by uniting themſelves with theſe officers in their annual elections, and becoming part of that popular body, gained whatever influence they wanted over the " comitia," and the commons at large, without ſeeming to deviate from the beaten track of the conſtitution [6]. Thus they very effectually put themſelves beyond the reach of all legal reſtraint [7], and the people became the ſlaves of that very inſtitution, which was originally created to ſecure their liberties.

A. U. C. 297.

Another more conſiderable advantage was gained in the tenth conſulſhip of Auguſtus; when the ſenate took an oath to ratify all his acts, and made a decree, to " releaſe him from all the coercive

[6] Grav. de Rom. Imp. 8.

[7] Λελυνται δη των νομων * * * τυτ' εστιν ελευθεροι απο πασης αναγκαιας νομισεως εισι, και ουδεν των γεγραμμενων ενιχονται. Dio Caſſ. 53. 18.

" power

" power of the laws, leaving him at liberty to do, or not do, what-
" ever was moſt agreeable to his own inclination[s]."

Were theſe words of the hiſtorian taken in the full latitude which their ſenſe will indubitably bear, we muſt be led to conclude, that, from this inſtant, the whole government was irretrievably reduced to one comfortleſs and melancholy ſcene of deſpotiſm: that this " Lex Regia," as it is generally called, had, at one fatal blow, cut off every remaining branch of the antient legiſlature; and had left no other reſource to the once free and happy ſubjects of this mighty empire, but to tremble and obey.

It is an irreparable misfortune to the learned world, that the hiſtorians, who treated of the events of thoſe times, have come down to poſterity in ſo very imperfect and mutilated a ſtate, that nothing can be collected with certainty concerning ſeveral of the moſt intereſting tranſactions; and of this, which is the ſubject of the preſent inquiry, in particular. Livy and Dionyſius, both of whom flouriſhed in the reign of Auguſtus, and were equally celebrated for their judgment and veracity, are more than half loſt. Tacitus begins with Tiberius; moſt probably, becauſe he found it unneceſſary to repeat what was, thus far, related with ſufficient accuracy. Suetonius, at all times conciſe, has hardly made any mention of it at all. So that the earlieſt account of this law, that can be depended upon, is to be found in Dio Caſſius, who did not begin his hiſtory till above two centuries after it was ſuppoſed to have been enacted.

In the midſt, therefore, of this profound ſilence, obſcurity, or uncertainty of the cotemporary writers; where the real truth is not to be

[s] Ὅρκους ἡ βουλὴ, βεβαιώσα τας πραξεις αυτου, ἐποιησατο - - - - - - - - - πασης αυτον της των νομων αναγκης απηλλαξαι, ἱνα - - και αυτοτελης οντως και αυτοκρατως και ἑαυτου και των νομων, παντα τι ὁσα βουλοιτο ποιοιη, και παυθ' ὁσα μη βουλοιτο, μη πραττῃ. Dio Caſſ. 53. 28.

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diſcovered, from any plain and authentic narrative of the facts now extant; our only remedy is to collect ſuch circumſtances, as ſeem to bear any well-founded relation to the ſubject, as we find them diſperſed, in a very unconnected ſtate, through a variety of authors both antient and modern; and to form ſuch concluſions, as may be beſt warranted by a general review of the whole.

It has been already clearly proved, that Auguſtus frequently renounced all pretenſions to abſolute monarchy, and that the power which he exerciſed was limited in its duration by his own expreſs deſire, and required frequent renovations [9]. Great, therefore, as his influence really was, it does not appear that the Roman government was ever intended to be made *conſtitutionally* deſpotic, either under the new regulations meditated by J. Cæſar, or during the prudent and moderate adminiſtration of Octavius.

Nothing here advanced is deſigned, in the ſmalleſt degree, to draw a veil over the imperfections of the Roman conſtitution, to apologize for tyranny, or to palliate the encroachments that ſeveral, even of the beſt Emperors, too often made upon popular liberty: but only to convey as juſt an idea as poſſible of the principles of their government, and of the courſe of legiſlation during this important period; which, for want of duly attending to the diſtinction between the *civil* and *imperial* power of theſe princes, has not hitherto been properly underſtood. From hence likewiſe it will appear that bad men, and irregular legiſlatures, are not wholly incapable of framing laws that are very propitious to the common rights of nature and ſociety [10]: a truth, which a noble indignation againſt

[9] Βυληθεις δε και ὡς ὁ Καισαρ πρῶτος σφας απαγαγειν τε τι μοναρχικον φρονειν δοκειν, ες δεκα ετη την αρχην των δοθεντων οι ὑπεσχετο. τοσουτω τι γαρ χρονῳ καταστησειν αυτα ὑπισχετο και προσεπαιτησατο, ειπων ὁτι αν και θατ̃ον ἠμερωθῃ, θατ̃ον αυτοις και εκεινα αποδωσει. Dio Caſſ. 53. 13.

[10] "Laudabilia multa etiam mali fa-"ciunt." Plin. Pan. 56.

deſpotiſm,

deſpotiſm, ſo peculiar to Britiſh hearts, will not always permit us to comprehend.

The only way, therefore, by which we may hope to arrive at any probable knowledge of the extent of that power, ſuppoſed to be derived from this famous law, is to conſider how far it was practiſed; to what length it was carried; and in what ſenſe it was generally received [11] by thoſe princes, who appear to have had the happineſs of their people the moſt at heart; and to have beſt underſtood the true principles of the conſtitution. Acts of violence, committed by tyrants, prove nothing.

It has been already ſhewn, that the monarchy, as eſtabliſhed by Romulus, was limited; that each eſtate of the realm had its ſhare in the legiſlature; and that the power of the commons increaſed, in a gradual and moderate proportion, till the whole of this happy ſyſtem of government was finally deſtroyed by Tarquin. From henceforward, both the office and title of *king* were ſuppreſſed, and for ever interdicted by an irreverſible anathema. Five centuries were not ſufficient to eradicate the hereditary terror and odium which it had inſpired into the whole nation.

Auguſtus was too wiſe not to ſee the force of this deep-rooted averſion; and the great danger of exerting that power, which the ſervile flattery of the ſenate had conferred upon him, to its full extent: he, therefore, continued to ſupport the antient rights of the "comitia;" and *in them* paſſed many wholeſome and popular laws, ſeveral of which are ſtill extant, under the name of "Leges Juliæ." Though the legiſlative rights of the commons, with moſt other of their fundamental powers and privileges, expired with this Emperor; yet the ſenate ſtill retained theirs, and enjoyed, at leaſt, a partial exerciſe of them, for many ages afterwards. We find them expreſsly

[11] "Si de interpretatione legis quæratur; "ma enim eſt legum interpres conſuetudo." "in primis inſpiciendum eſt quo jure civitas D. 1. 3. 37.
"retro in ejuſmodi caſibus uſa fuiſſet: opti-

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recognized by a conſtitution of the Emperors Gratian, Valentinian, and Theodoſius; with ſevere penalties againſt ſuch as ſhould endeavour, by clandeſtine means, to obtain any imperial reſcript, to invalidate their authority [12]. They are likewiſe confirmed by Juſtinian in his new body of laws [13]; neither were they utterly extinguiſhed, though long reduced to ſhadows, till the reign of Leo the Philoſopher, in the ninth century [14].

The idea, therefore, of the prince being totally diſcharged from all legal obligation whatever [15], if taken in its literal ſenſe, will imply an intire and inſtantaneous ſubverſion of the whole Roman conſtitution; and that every kind of power, whether legiſlative or executive, was transferred excluſively to him alone. But, this being directly contrary to the moſt certain hiſtorical teſtimony, the words muſt either be underſtood in a qualified ſenſe, or they can convey no meaning at all.

The pre-eminence, which the Emperor had acquired over the reſt of the people, was naturally accompanied with ſome imaginary excellence of perſon, that demanded the peculiar favor and attention of the legiſlature. He, in whom the whole active force of the community was veſted, could not be made ſubject to the penal operations of the laws [16], without degrading the majeſty of the ſtate itſelf,

[12] "Quamvis ſenatuſconſultum perpetuam per ſe obtineat firmitatem, tamen noſtris legibus etiam idem proſequimur: adjicientes, ut ſi quiſquam ſpeciali ſupplicatione eliciendum aliquod reſcriptum tentaverit, ut tranſire ei formam liceat ſtatutorum, tertia patrimonii parte multetur, et damnatus ambitus crimine, maneat infamis." C. 1. 16.

[13] "Non ambigitur, ſenatum jus facere poſſe." D. 1. 3. 9.

[14] The conſtitution, which gave the final blow to this once-powerful body, bears the following title: NE AMPLIUS SENATUSCONSULTA FIANT; and then proceeds to ſay; "Quemadmodum et in aliis legibus, quæ ad communem rerum uſum nihil conferrent, fecimus, ut eas tanquam ſupervacaneas e legum corpore ſubduceremus: ita hic quoque facientes, *eam legem quæ ſenatus* ferendarum legum poteſtatem facit, a legum quaſi republica ſecerni ſancimus. Nam, cum, ex quo ſenatoriam adminiſtrationem imperatoria majeſtas ſibi vindicavit, inutilem illam eſſe judicari debeat: ſi cum utilibus conjungeretur, et ineptum et ſupervacuum eſſet." Nov. Leo. 78.

[15] "Solutus legibus."

[16] Της των νομων αναγκης. Dio Caſſ. 53. 28.

itſelf, and cutting off the hand which bore the ſword for its protection. His perſon therefore was declared inviolable, and, according to the impious theology of thoſe ages, he was conſidered as a divinity, even while on earth [17]; ſo that he could not be called to an account, by the ordinary forms of juſtice, for thoſe common inſtances of miſconduct, to which, as a man, he was equally liable with all others. He was likewiſe releaſed from the obſervance of many ceremonial parts of the law: thus, for example, he was permitted to make his will without the ſtrict formalities of atteſtation; though he could not go ſo far as to claim an inheritance under an imperfect will [18]: he could alſo manumit a ſlave, without the uſe of the wand [19]; with various other peculiar indulgences of a ſimilar nature.

Theſe very particular inſtances ſhow, beyond doubt, that this much boaſted privilege was far from being ſo very extenſive, as the words at firſt view ſeem to imply. This may be ſtill further illuſtrated by a parallel caſe of Pompey; who is well known to have been favored with more of theſe unconſtitutional exemptions, both from the ſenate and people, than any one of the great men who lived under the republic; and that too, moſt frequently, at the recommendation of Cicero, the boaſted champion of popular liberty. The terms in which theſe indulgences are couched, if conſtrued according to their obvious meaning, infer as abſolute a releaſe from all legal coercion, as that which is the ſubject of our preſent diſquiſition: and yet, when their reſpective origin and cauſes are examined

17 "Præſens divus habebitur
"Auguſtus." Hor. Od. 3. 5. 2.

18 "Ex imperfecto teſtamento *nec imperatorem* vindicare poſſe, ſæpe conſtitutum "eſt. *Licet enim Lex imperii ſolennibus juris "imperatorem ſolverit*, nihil tamen tam pro- "prium imperii eſt, quam legibus vivere." C. 6. 23. 3. et Van Lewen in locum. Theſe are the words of the good Emperor Alexander Severus, who thus ſets poſitive bounds to his own prerogative.

19 "Imperator cum ſervum manumittit, "non vindictam imponit; ſed cum voluit, "fit liber is, qui manumittitur, ex *Lege "Auguſti*." D. 40. 1. 14. 1.

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with a proper degree of hiſtorical accuracy, they all appear to be only ſo many ſpecial diſpenſations, occaſionally paſſed for very particular purpoſes. To mention no more than one, Cicero himſelf ſpeaks of this his favorite hero, in general words, as being *releaſed from the laws*; at the inſtant that he applies them only to the privilege granted to him, of ſuing for the conſulſhip before the legal age[20].

From hence it follows, that the Emperor, though conſidered as head of this great political body, was not independent of it; but was bound by all the laws, unleſs particularly excepted; and was ſometimes even obliged to petition for theſe ſpecial exemptions. Thus Auguſtus obtained leave of the ſenate, to bequeath a larger ſhare of his fortune to his wife Livia, than the Voconian law uſually permitted[21]: which law was enacted in the laſt year of his life, long after he was ſuppoſed to have been made the abſolute maſter of the conſtitution; and which he would hardly have condeſcended to aſk, could he have diſpenſed with all laws at his pleaſure. Many other inſtances might likewiſe be produced of laws, under which the Emperors were equally included with the reſt of the people: but as a more particular recital would be dry and tedious, we ſhall refer, for further information, to ſeveral modern writers who have treated the ſame ſubject with great learning and penetration[22].

If therefore the prince himſelf, in whoſe favor the "Lex Regia" was ſuppoſed to have been made, neglected to take the advantage of it; and if the wiſer part of his ſucceſſors always acknowledged

20 "Quid tam ſingulare, quam ut ex ſe-"natuſconſulto *legibus ſolutus*, conſul ante "fieret, quam ullum alium magiſtratum per "leges capere licuiſſet." Cic. pro Le. Man. 21.

21 Καταλελειπτο δε εν αυταις (ſc. διαθηκαις) τα μεν δυο μερη του κληρου τω Τιβεριω, το δε λοιπον τη Λιουια, ως τινες λεγουσιν. ινα γαρ τι και εκεινη της ουσιας αυτου απονηται, παρα της βουλης ητησατο, τοσουτον αυτη και παρα των νομων καταλιπειν δυνηθηναι. Dio Caſſ. 56. 32.

22 Grav. de Rom. Imp. 27. Ger. Noodt. Obſ. 1. 4. Id. de Jur. Sum. Imp. Hein. Ant. Rom. 1. 2. 66. cum multis aliis.

the

the ſuperiority of the laws; the conſequence muſt be, that this abſolute ſtate of independence was never any avowed principle of the Roman conſtitution, but a mere chimera that had no exiſtence whatever in fact.

A few examples of laws, ſtill extant, will ſet this matter beyond the reach of doubt. "It becomes ſo high a potentate," ſays Paulus, "to obey thoſe laws from which he may *appear to be abſolved*[23]:" which words infer a ſuppoſition, that the acts of former ſenates had been interpreted in too general a ſenſe; and therefore, that the prince is ſtill bound in duty to obſerve the laws, however he may *appear* to have been diſcharged from the obligation. Thus the Emperors, Severus and Antoninus, diſclaim all advantages ariſing to themſelves from teſtaments made without the due forms of law; "For though," ſay they, "we are abſolved from the laws, yet we "think it our duty to live in obedience to them[24]." But to paſs over ſeveral others of the ſame import, the moſt ſtriking of all, is that liberal and patriotic declaration of thoſe great princes, Theodoſius and Valentinian; "It is worthy the majeſty of a prince, to confeſs himſelf "ſubject to the reſtraint of the laws, inaſmuch as they are the true "baſis of our own authority: and it is, in fact, more glorious for him "to ſubmit himſelf to their control, than to live in full poſſeſſion of "the ſovereign power. Therefore by the oracle of this preſent "edict, we now declare to the world, what liberties we do not think "meet to allow ourſelves[25]:" Words, that ought to be written in letters of gold over every throne in the univerſe! Though inveſted

[23] "Decet tantæ majeſtati eas ſervare "leges, quibus ipſe *ſolutus eſſe videtur*." D. 32. 1. 23.

[24] "Licet enim legibus ſoluti ſimus, attamen legibus vivimus." I. 2. 17. 8.

[25] "Digna vox eſt majeſtate regnantis, "*legibus alligatum* ſe principem profiteri: "adeo de auctoritate juris noſtra pendet "auctoritas. Et revera magis imperio eſt, "ſubmittere legibus principatum. Et oraculo præſentis edicti, quod nobis licere non "patimur, aliis indicamus." C. 1. 14. 4.

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with all the authority that a ſubmiſſive people could permit them to exert, they were ſenſible themſelves, that neither the laws of God or reaſon left them at liberty to follow the dictates of their own arbitrary will; but that they were obliged to direct all their endeavours to the welfare of thoſe, from whoſe hands they had received ſo important a truſt; and from whoſe conceſſions they actually derived all the power which they exerciſed.

Perhaps it may be objected, that the expreſſion, "It *becomes* them "to keep the laws," goes no further than to hint the duty, but not to inforce the obſervance; and conſequently, that it was ſtill left to the option of the prince, whether he would conform to them or not. But it is a neceſſary property of all laws to be peremptory; to carry with them not only a moral, but a poſitive, obligation; ſo as to impreſs, with a proporionable degree of guilt, every one who ſhall refuſe an implicit obedience to their commands. Appearing therefore, as they here do, under the form of laws, they become arbitrary and binding, by their very nature, and the force of the terms. The modeſt and reſpectful language in which they are drawn, might have been deſigned as a ſpecial compliment to the dignity of that high perſonage who is meant to be the object of them: though they ſeem rather to have been dictated by that elegant turn of ſentiment, ſo peculiar to the Roman writers in general, and by which the whole body of their laws, the more antient ones at leaſt, are ſo eminently diſtinguiſhed; eſpecially, as we find the ſame decent mode of expreſſion made uſe of, in laws which have no immediate or apparent relation to the prince whatever[26].

But be that as it may, this circumſtance makes no difference in their obligatory quality; the prince being as much ſubject to their commands, as if they had ſpoken in the more rude and imperative voice of modern legiſlatures. From hence likewiſe every

[26] G. Noodt. Obſ. 1. 4.

impartial reader will be convinced, that the *civil* government of Rome ſtill retained many marks of its original freedom; that the ſubjects ſtill continued to enjoy the benefit of their own primitive, fundamental laws, the force of which was acknowledged and ſubmitted to by the Emperors themſelves: and that the frequent outrages committed by ſeveral monſters of cruelty, with the aſſiſtance of their militia, was the deſpotiſm of man, not of the conſtitution.

The laws of England often ſpeak in as high ſtrains of the ſacredneſs of the king's perſon, and of the majeſty of his office, as thoſe of Rome; and yet who would dare to affirm, that the monarchy of England was abſolute? The moſt liberal writer upon juridical ſubjects, which ever yet graced this country, hath ſaid, "That, by "law, the perſon of the king is ſacred, even though the mea"ſures purſued in his reign be completely tyrannical and arbitrary: "for no juriſdiction upon earth has power to try him in a criminal "way; much leſs to condemn him to puniſhment[27]." "The king "is God's vicar and miniſter upon earth," ſaith an antient oracle of Engliſh juriſprudence; "every one is under him, and he is "under none but God alone[28]." What words, if ſimply and literally underſtood, can ſavour ſtronger of a divine right of becoming a tyrant at pleaſure, than theſe now before us? And yet has this heaven-born ſovereign of ours been often oppoſed, and driven from his throne; elſe had we now not been at liberty to maintain the doctrine of reſiſtance.

Caſes of extraordinary violence, which cannot be preſumed or foreſeen, much leſs provided againſt, by the common rules of civil policy, will always find an occaſional remedy from the dictates of ſelf-preſervation, which is the firſt law of nature. The Romans had

[27] Blackſt. Comm. 1. 7.

[28] "Rex eſt vicarius et miniſter Dei in "terra; omnis quidem ſub eo eſt, et ipſe "ſub nullo, niſi tantum ſub Deo." Bract. 1. 8.

no

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no poſitive laws for the puniſhing of tyrants, any more than ourſelves; but they had the ſame abhorrence of them; the ſame quick feelings of their own oppreſſions; and thought it no treaſon againſt the "Lex Auguſti," to degrade them from their office, and to take the forfeit of their lives, as peſts of human ſociety. But the principle of arbitrary power was no more imputable to the conſtitution of Rome, becauſe it had the misfortune to be abuſed by its Nero and Domitian; than it would be to that of England, which more tamely ſuffered its Henry and Mary to go to their graves in peace.

With reſpect to the private, civil rights of the Emperor, the laws of Rome are more contrary to the *apparent* ſpirit of the "Lex "Imperii," than even thoſe of England. By the former, as we have already ſeen[29], the prince is ſuppoſed to be bound of courſe, unleſs particularly excepted: but by the indulgence of the laws of England, "the king is not bound by any act of parliament, unleſs he "be named therein by ſpecial and particular words;" and yet, "he may take the benefit of any act, though he be *not* eſpecially "named[30]."

Why then, will it be aſked, is the Roman conſtitution leſs free than the Engliſh? The truth is, that the difference does not reſt ſo much in the principle of the laws themſelves, as in the irreconcilable jealouſy and diſcordancy between the ſeveral component parts of the Roman legiſlature; which prevented them from uniting their mutual endeavours, in ſupport of the common intereſt. The imperial power aroſe gradually in the midſt of the two great contending factions which divided the ſtate, and was founded upon the wrecks of both. But the Emperors, chiefly intent upon their perſonal ſecurity, were not ſolicitous to caſt the broken remains of the old conſtitution in a new mould; but ſuffered them all to lie together in a confuſed heap, without any effective attempt to reduce the political

[29] P. 352. et Grav. de Rom. Imp. 27. [30] Blackſt. 1. 7.

edifice

edifice once more to comelineſs and ſymmetry. The princes acquired powers, which they thought it imprudent to exerciſe in their full extent; and the ſenate and people poſſeſſed liberties, which they dared not aſſert. All were legiſlators ſeparately, but rarely concurred in exerciſing that right together. Not that this was any new inconvenience; but a radical blemiſh, which had ſubſiſted in the republic, ever ſince the extinction of the regal government.

This, as eſtabliſhed by Romulus, was a free commonwealth, adminiſtered by a king; a regular body compounded of various members, each of whom diſcharged the particular ſhare of duty that belonged to his reſpective ſtation and department; at the ſame time that the public welfare was the ſole point, to which all their different exertions were directed. In ſhort, it was a limited monarchy, founded (without diſparagement be it ſpoken) upon a principle very ſimilar to our own. But, upon the introduction of the democracy, the bond of union was greatly relaxed. The ſeveral conſtituent parts of the ſtate, having often very oppoſite intereſts to purſue, became too much detached from, and independent of, each other. Inſtead of being animated with one ſoul, and joined together, as before, in framing one uniform ſyſtem of laws, which, by their combined influence, ſhould give life and ſtrength to the whole, they were generally fomenting mutual jealouſies; caballing againſt each other's power; and endeavouring, by partial laws, to leſſen each other's conſequence.

Theſe miſchiefs naturally reſulted from the neglecting to make a proper diſtinction between the joint acts of the whole community, and the particular acts of the ſenate and commons. By allowing to both, in their turns, the ſame weight and authority, each became equal to the whole; which was the greateſt of all political abſurdities. By degrees likewiſe the ſeveral magiſtrates, originally no more than merely miniſterial and executive officers; and even the ad-

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vocates, who were no other than interpreters and commentators; ſet up their own decrees and opinions, and became legiſlators among the reſt. This ſtill added to the general confuſion, and made the commonwealth a many-armed monſter, vigorous and formidable enough in his appearance, but feeble in his action, and embarraſſed in his operations. The imperial office was a very inadequate remedy for ſuch fundamental defects. The ſenate and people, too weak to reſiſt the prince, but unwilling to make him abſolute ſovereign at once, conferred upon him certain occaſional powers to make laws, ſtill reſerving a conſiderable ſhare to themſelves; ſo that the old inconvenience yet remained, of a variety of co-ordinate legiſlative powers in the ſame ſtate; each of which continued to exerciſe a diſtinct right of legiſlation independent of the others.

The very conſpicuous character under which the Emperor now appeared, eaſily prevailed over the fears of a degenerate people, to compliment him with ſome new and extraordinary privileges. But theſe were not beſtowed with ſo laviſh a hand, as is generally ſuppoſed. A late learned civilian[31] has clearly ſhewn, that the famous paſſage from Dio Caſſius, already quoted[32], which has been uſually conſidered as the foundation of the "Lex Regia," referred only to an act of the ſenate, diſcharging Auguſtus from the reſtrictions of the Cincian law, which prohibited any largeſſe to the people, beyond a certain value[33]; and as the Emperor, lately recovered from an illneſs, was deſirous of extending his generoſity, but was prevented by the law, as it then ſtood, the ſenate releaſed him from it, and left him at liberty to act therein as he ſhould think proper.

Two other decrees were made very ſhortly afterwards, to qualify Marcellus and Tiberius for magiſtracies before the legal age: from

[31] G. Noodt. Diſſ. de Jure Summi Imp. p. 777.

[32] P. 121.

[33] "Lex Cincia ſupra certum modum donari prohibet, exceptis quibus cognatis." Ulp. Frag. 1. 1.

whence

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whence it evidently follows, that the favors thus conferred were partial, and confined only to thoſe objects for which they were granted: for if, by this ſingle act, he had been diſcharged at once from all further obſervance of law whatſoever, theſe particular diſpenſations would have been unneceſſary. The ſame may be ſaid of ſome additional honors decreed to him, in like manner, the year following; as that, among many others, of being perpetual tribune. And yet, after all theſe important conceſſions, which carry no appearance of having proceeded from any principle of adulation, the hiſtorian adds, that Auguſtus ſtill behaved to the ſenate as a free body[34]: in proof whereof, when certain ambaſſadors from Phraates, king of Parthia, came to Rome to ſubmit their controverſies to his deciſion, he introduced them into the preſence of the fathers, and received a ſpecial commiſſion from them to terminate the diſputes.

A. U. C. 731.

Again, four years after this, the ſame ſupreme body voted him ſeveral new powers; and, among the reſt, that he might make what alterations, or paſs what laws he pleaſed, to bear his own name; and offered to bind themſelves by oath to obſerve them: but this latter part of the compliment he wiſely declined; well knowing that, if they were ſincere, no oath would be neceſſary, if not, that none would be binding[35]. Whatever, therefore, the hiſtorian himſelf might have imagined, or others may have conceived, either from his miſrepreſentations, or their own miſunderſtandings, the above facts alone are ſufficient to prove, that Auguſtus was abſolved from no other laws, but ſuch as were expreſsly ſpecified by the ſenate; and that by

[34] Και μοι δοκει ταυθ' υτω τοτε υκ εκ κολακειας, αλλ' επ' αληθειας τιμηθεις, λαβειν. τα τε γαρ αλλα ως ελευθερος σφισι προσεφερετο. Dio Caſſ. 53. 33.

[35] Διορθυν τε παντα αυτα και νομοθετειν οσα βουλοιτο ηξιουν. και τους τε νομους τους γραφησομενους υπ' αυτυ, Αυγουστους επειθεν ηδη προσηγορευον, και εμμενειν σφισιν ομοσαι ηθελον. ὁ δε τα μεν αλλα ως ατε και αναγκαια εδεξατο, τους δ' ὁρκους αφηκεν αυτους. και γαρ ευ ηδει, ὁτι ει μεν απο της γνωμης τι ψηφισαιντο, τηρουσιν αυτο, κ' αν μη ὁμολογησωσιν· ει δε μη, ουδεν αυτυ κ' αν μυριας πιστεις επαγαγωσιν, προξενησουσιν. Id. ib. 54. 10.

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all others he was equally bound with the reſt of his fellow-citizens. And what is here ſaid of him is not leſs applicable to his ſucceſſors.

The tribunes had not yet intirely loſt their antient prerogative of convoking the ſenate, though the ſame had likewiſe been granted to Auguſtus [36]. Tiberius, therefore, in his firſt affected fit of moderation, cauſed it to be ſummoned by the ſame primitive authority, in order to notify his acceſſion [37]: and when this baſe crew of ſycophants urged his acceptance of the ſame honors which had been enjoyed by his predeceſſor, he declined many of them [38]; pretending a deſire to leave the adminiſtration of government, for the preſent, in the hands of the conſtitutional magiſtrates [39]. He acted this farce with the moſt conſummate policy and hypocriſy, during the life of Germanicus; but that reſtraint being once removed, he could contain no longer, and broke out gradually into every exceſs of vice and brutality [40].

But the innumerable acts of tyranny and violence committed by him, and ſeveral of his no leſs infamous ſucceſſors, are no proofs of any legal right on their parts; on the contrary, it is certainly true, that they generally ſhared the ſame fate with their authors; being reſcinded with every mark of deteſtation, wherewith a people ſo juſtly incenſed could poſſibly brand them: and the ſenate, upon the inauguration of every new Emperor, ſtill main-

[36] Ὥστε και το την βυλην αθροιζειν ὁσακις αν εθηλησῃ. Dio Caſſ. 54. 3.

[37] "Jure tribunitiæ poteſtatis coacto ſe-"natu." Suet. in Tib. 23.

[38] "Ex plurimis maximiſque honoribus, "præter paucos et modicos non recepit." Id. ib. 26.

[39] Tiberius cuncta per conſules incipie-"bat, tanquam vetere rep. et ambiguus im-"perandi. Ne edictum quidem, quo patres "in curiam vocabat, niſi tribunitiæ poteſ-"tatis præſcriptione poſuit, ſub Auguſto ac-"ceptæ." Tac. Ann. 1. 7.

[40] Ταυθ' ὑτω παντα μεχρι γε και ὁ Γερμανικος εζη εποιει· μετα γαρ τυτο συχνα αυτων μετεβαλλε, ειτ' ουν φρονων μεν ὑτως απο πρωτης, ὡς ὑστερον διεδειξε, πλασαμενος δε ες ὁσον εκεινος εζων, επειδητερ εφεδρευοντα αυτον τη ἡγεμονια ἑωρα· ειτε και φθονυκως μεν ευ, εξοκειλας δ' ὁτι τὸ ανταγωνιςυ ειρηθη. Dio Caſſ. 57. 13. And again, Τιβεριος δε, επει τον εφεδρευον ουκετ' ειχεν, ες παν τουναντιον των προσθεν ειργασμενων αυτῳ, πολλων ὁντων και καλων, περιες·η· τα τε γαρ αλλα αγριως ηξε. Id. ib. 19.

tained

tained their own right of renewing the privileges formerly conferred upon his predeceſſors; and of extending them from time to time, as they thought moſt expedient for the ſupport of the Imperial dignity: ſo that, great as the power really was, it ſtill continued, in point of law, dependent upon the will of the ſenate; though that will was too often kept in ſubjection by the terrors of military force.

The policy of the ſenate and people, upon the acceſſion of Veſpaſian, will ſet this matter in the moſt clear and ſatisfactory point of view imaginable. They immediately decreed him every honor uſually granted to former princes [41]. But that he might not interpret theſe conceſſions into an indefinite enlargement of the Imperial prerogative, they very wiſely enumerated them all, one by one; ſpecifying the laws from which he ſhould be releaſed, and the rights he ſhould be at liberty to claim: the general intereſt of the commonwealth being pointed out, in expreſs words, as the ſtandard whereby he was to regulate his behaviour, in the future exerciſe of theſe important powers.

From the valuable fragment of antiquity, whereon theſe remarks are founded, and to which we have formerly alluded [42], we are well authoriſed

[41] V. p. 270.

[42] V. p. 270. It was our firſt deſign, as will appear from Note 66 of the ſame page, to have omitted the repetition of this fragment, it having been ſo frequently given in other modern publications. But as thoſe works may not happen to fall into the hands of the generality of our readers, we ſhall hope that the convenience of placing the authority itſelf immediately before their eyes, will be a ſufficient apology for inſerting it, as copied from Gruter's Inſcriptions, p. 242, where it ſtands, with the following title:

TABULA ÆNEA, in Baſilica Lateranenſi, alta palmos ix, lata palmos v, digitos tres craſſa, partem facultatum Imperatori Cæſari Veſpaſiano Auguſto, a *Senatu Populoque Rom.* per legem conceſſarum, continens.

FOEDUSVE. CUM. QUIBUS. VOLET. FACERE. LICEAT. ITA. UTI. LICUIT. DIVO. AUGTI. JULIO. CÆSARI. AUG. TIBERIOQUE. CLAUDIO. CÆSARI. AUG. GERMANICO.

UTIQUE. EI. SENATUM. HABERE. RELATIONEM. FACERE. REMITTERE. SENATUS CONSULTA. PER. RELATIONEM. DISCESSIONEMQUE. FACERE. LICEAT ITA. UTI. LICUIT. DIVO. AUG. TI. JULIO. CÆSARI. AUG. TI. CLAUDIO. CÆSARI AUG. GERMANICO.

UTIQUE,

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authoriſed to affirm, that, notwithſtanding the predominancy of a monarchical form of government in the perſons of the Cæſars, the ſenate at leaſt, if not the people, ſtill preſerved an actual ſuperiority, and a diſtinct power of their own; of which they gave the moſt ſubſtantial proofs, by imparting to each Emperor reſpectively, ſuch privileges, and ſuch only, as they, in their own diſcretion, thought expedient: that theſe favors were not hereditary, but perſonal: that they were different to different princes: and that out of the nine

UTIQUE. CUM. EX. VOLUNTATE. AUCTORITATEVE. JUSSU. MANDATUVE. EJUS PRÆSENTEVE. EO. SENATUS. HABEBITUR. OMNIUM. RERUM. JUS. PERINDE HABEATUR. SERVETUR. AC. SI. E. LEGE. SENATUS. EDICTUS. ESSET. HABERETURQUE,

UTIQUE. QUOS. MAGISTRATUM. POTESTATEM. IMPERIUM. CURATIONEMVE CUJUS. REI. PETENTES. SENATUI. POPULOQUE. ROMANO. COMMENDAVERIT QUIBUSQUE. SUFFRAGATIONEM. SUAM. DEDERIT. PROMISERIT. EORUM COMITIIS. QUIBUSQUE. EXTRA. ORDINEM. RATIO. HABEATUR.

UTIQUE. EI. FINES. POMERII. PROFERRE. PROMOVERE. CUM. EX. REPUBLICA CENSEBIT. ESSE. LICEAT. ITA. UTI. LICUIT. TI. CLAUDIO. CÆSARI. AUG. GERMANICO.

UTIQUE. QUÆCUNQUE. EX. USU. REIPUBLICÆ. MAJESTATE. DIVINARUM HUMANARUM. PUBLICARUM. PRIVATARUMQUE. RERUM. ESSE CENSEBIT. EI. AGERE. FACERE. JUS. POTESTASQUE. SIT. ITA. UTI. DIVO. AUG TIBERIOQUE. JULIO. CÆSARI. AUG. TIBERIOQUE. CLAUDIO. CÆSARI AUG. GERMANICO. FUIT.

UTIQUE. QUIBUS. LEGIBUS. PLEBEIVE. SCITIS. SCRIPTUM. FUIT. NE. DIVUS. AUG TIBERIUSVE. JULIUS. CÆSAR. AUG. TIBERIUSQUE. CLAUDIUS. CÆSAR. AUG GERMANICUS. TENERENTUR. IIS. LEGIBUS. PLEBISQUE. SCITIS. IMP. CÆSAR VESPASIANUS. SOLUTUS. SIT. QUÆQUE. EX. QUAQUE. LEGE. ROGATIONE DIVUM. AUG. TIBERIUMVE. JULIUM. CÆSAREM. AUG. TIBERIUMVE CLAUDIUM. CÆSAREM. AUG. GERMANICUM. FACERE. OPORTUIT. EA. OMNIA. IMP. CÆSARI. VESPASIANO. AUG. FACERE. LICEAT.

UTIQUE. QUÆCUNQUE. ANTE. HANC. LEGEM. ROGATAM, ACTA. GESTA DECRETA. IMPERATA. AB. IMPERATORE. CÆSARE. VESPASIANO. AUG JUSSU. MANDATUVE. EJUS. A. QUOQUE. SUNT. EA. PERINDE. JUSTA. RATAQUE SINT. AC. SI. POPULI. PLEBISVE. JUSSU. ACTA. ESSENT.

SANCTIO.

SI. QUIS. HUJUSCE. LEGIS. ERGO. ADVERSUS. LEGES. ROGATIONES. PLEBISVE. SCITA SENATUSVE. CONSULTA. FECIT. FECERIT. SIVE. QUOD. EUM. EX. LEGE. ROGATIONEVE PLEBISVESCITO. S. VE. C. FACERE. OPORTEBIT. NON. FECERIT. HUJUS. LEGIS ERGO. ID. EI. NE. FRAUDI. ESTO. NEVE. QUIT. OB. EAM. REM. POPULO. DARE. DEBETO. NEVE. CUI. DE. EA. RE. ACTIO. NEVE. JUDICATIO. ESTO. NEVE. QUIS. DE. EA. RE. APUD. SE. AGI. SINITO.

predeceſſors of Veſpaſian, no more than Julius Cæſar, Auguſtus, Tiberius, and Claudius, are recited in that decree, as having been the objects of any ſpecial indulgences whatever.

From the ſame premiſes it may likewiſe be concluded, that the four emperors juſt mentioned, how much ſoever they might have occaſionally exceeded the due limits of their power, did not go ſo far as utterly to annihilate the other conſtituent parts of the commonwealth; but that they ſtill exiſted, and were occaſionally called forth, to ſtrengthen the hands, and increaſe the authority of thoſe, who were ſuppoſed to have been their abſolute maſters. It is likewiſe further obſervable, that the names of Caligula, Nero, Galba, Otho, and Vitellius, are paſſed over in ſilence; which may poſſibly be owing to their extreme tyranny, to the violent ſtruggles between them for empire, or to the ſhortneſs of their lives; all which cauſes either totally ſuperſeded, or left no time for, the regular operations of the other legiſlative powers of the ſtate.

The learned civilian of our own country, who has alſo copied the ſame fragment[43], ſuppoſes that it is deſcribed in other parts of the civil law, under the ſeveral characters of "Lex Imperii[44]," "Auguſtum Privilegium[45]," and "Lex Auguſti[46]:" though it is evident, from the titles themſelves, that the firſt of theſe refers to certain laws made in the time of Auguſtus, called "Leges Juliæ et "Papiæ," which favored the pretenſions of the exchequer, in the caſe of want of heirs; and which Juſtinian himſelf here limits in the ſtricteſt manner againſt the crown. The ſecond is a reſcript of the Emperor Alexander, renouncing his right to any claim under an imperfect teſtament: and the third concerns only the manumiſſion of ſlaves, without the obſervance of the ordinary formalities: but none of them can be uſed in ſupport of that great latitude of power, commonly deduced from the law now in queſtion.

[43] Taylor, p. 238.
[44] C. 6. 23. 3.
[45] C. 6. 51. 1. 14.
[46] D. 40. 1. 14.

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Under the foregoing view, therefore, the "Lex Regia" was not a law by which any new kingdom was erected, or a king created; but ſuch a one only, whereby unlimited power was granted to particular princes, in particular caſes; and, in this ſenſe, does not apply to Auguſtus alone, but even to many other noble and excellent perſonages, in the pureſt times of republican liberty.

The caſe was much the ſame with regard to the Dictator, who was a complete monarch for the time; who even ſuſpended every magiſtrate and public officer, the tribunes of the people alone excepted[47]; and, according to the general idea entertained of the office, was totally diſcharged from all legal coercion. But, if we ſuppoſe that he was left at full liberty to invade the rights of private property, or to commit any other acts of oppreſſion which his paſſions might ſuggeſt, in the wanton moments of unbounded power; his nomination could never have proceeded from the deliberate choice of a ſober people, attentive to their own preſervation, but from the frantic ravings of a deſpairing multitude. He was therefore no further abſolute, than was neceſſary to ſtrengthen his hands for the public ſervice. If the end of that was, to repel an invaſion, to quell a ſedition, or to prevent any other impending evil, he was immediately inveſted with ſuch powers, as were competent to the occaſion for which he was created. He might ſet up his ſtandard in what field he pleaſed, and command all perſons capable of bearing arms to repair to it inſtantly. He might ſend them upon any expeditions, however dangerous; might lay them under any ſyſtem of diſcipline, however hard or laborious; and all this under whatever penalties he thought proper to inflict, even to the forfeiture of their lives; without being himſelf liable to be called to account for his conduct at the expiration of his time. But it is no where to be found, that he could repeal the fundamental laws of the conſtitution,

47 Ἡ δημαρχια διαμενει, τας δε αλλας καταλυσει πασας, δικαιωθεις αιρεθεις. Plut. in Ant. p. 73.

or make any other alteration in the civil policy of the ſtate, which did not bear an immediate relation to the deſign of his appointment.

Upon the whole, after the moſt mature conſideration of the preceding ſubject, it will not be going too far to affirm, that the ſeveral princes, whoſe political characters we have endeavoured to repreſent in their true light, without favor or prejudice, were never acknowledged by their reſpective electors and conſtituents for ſuch abſolute monarchs, as we, in theſe later times, ſuppoſe them to have been. Their immunities and prerogatives, though indubitably great and formidable, were, nevertheleſs, of a very ſpecial nature; and, according to the legal idea of *privileges*, could not be juſtly extended beyond the line within which they were originally circumſcribed; but, upon the well-known rule of common ſenſe, no leſs than of law, required a ſtrict conformity and obedience to the general laws of the ſtate, in all other caſes in which they were not particularly excepted [47].

It would be abſurd to conceive, that ſo long a train of princes, of ſuch oppoſite characters, would have condeſcended to acknowledge a dependence upon the ſenate, or to accept theſe frequent renewals of their power, could they have demanded them on their acceſſion, as the eſtabliſhed rights of the imperial office; or had they been declared abſolute, by any avowed and fundamental law of the conſtitution. Even the moſt tyrannical among them, in the cooler moments of reflexion, paid an outward deference to the ſuperior authority of the fathers: while thoſe of milder diſpoſitions ſo well underſtood the nature of their power, as much oftener to decline what was offered, than to exceed the juſt limits of what they poſſeſſed.

Though the celebrated facts, from whence the principle of what is called the "Lex Regia" was afterwards derived, ſeem to have found

[47] "Exceptio confirmat regulam in non exceptis."

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their way, for the firſt time, into the writings of the Roman lawyers and hiſtorians, under the reign of Alexander Severus; yet it is particularly worthy of obſervation, that the prince himſelf gave no countenance to any ſuch unpopular doctrines; but that he declined the title of *Lord*[43], as carrying with it too high a degree of ſuperiority; and, in the humility and moderation of his heart, confined himſelf to that of *Emperor*, as of a more private and limited import. That, having once accepted the grant of many more prerogatives, than had ever been conferred upon any of his predeceſſors in the ſpace of a ſingle day, the ſenate was obliged to juſtify this unconſtitutional violation of an eſtabliſhed cuſtom, by the pretence of being driven to it by very ſpecial conſiderations.

The moſt, therefore, that can juſtly be implied in the idea of this famous law, is only this; that, when the republican form of government began to decline, and, from many natural cauſes, could no longer exiſt in its primitive ſhape; the neceſſity of the times required ſome one ſupreme magiſtrate, to give vigor and activity to the laws, and to be the general miniſter for the advantage of the whole. To enable him to diſcharge theſe duties with better effect, it was requiſite for the people, or legiſlative body, of whomſoever that was compoſed, to fortify him from time to time with certain peculiar privileges; which he was to enjoy, either for life or a term of years, under the limitations particularly ſpecified. But theſe powers were both derivative and temporary. As they originated from the conſent of the body at large, ſo they reverted to it upon every demiſe of the prince; and upon a new election were regranted, under whatever reſtrictions the permanent ruling power thought moſt expedient. In a courſe of years, indeed, as the antient ſpirit of the conſtitution declined, the prince, by the aid of his military force, gained a complete aſcendency over all the other branches; and aſſumed an unreaſonable ſhare of the legiſlation into his own hands; under which an intimi-

[43] "Dominus." V. p. 336.

dated

dated and deſponding people were at length forced to acquieſce, merely for want of courage or ability to reſiſt. CHAP. VII.

This was the unhappy criſis to which the people were actually reduced in a few more centuries; when the antient glory of the Roman name was extinguiſhed by the diviſion of the empire, and the ſeat of it transferred to another region; where the ſervile temper of the Greeks made every thing lawful, which a reſolute or tyrannical monarch dared to injoin.

Juſtinian therefore, or rather Tribonian the compiler of the Digeſt, taking advantage of the ſeveral detached laws, which confirmed the ſupreme power of the Emperor in various particular inſtances; and either miſunderſtanding, or, more probably, miſrepreſenting, ſome opinions of Ulpian; contrived, out of the whole, to ſet up this doctrine of the regal and abſolute power of the Emperor, which, till this time, was never the language of the Roman laws; though it became, from henceforward, a conſtitutional principle of legiſlation, from the tame ſubmiſſion of a corrupt people[49], grown baſely indifferent to the glorious freedom of their bold and ſturdy anceſtors.

CHAP. VII.

Council or Conſiſtory of the Emperors.—Reſcripts.—Decrees.—Edicts.

FROM the foregoing view of the ſtate of the Roman government, under the princes of the two firſt centuries after the decline of the republic, we learn, that the Imperial office was of a very complicated nature; including a variety of powers, both military and civil. That the former were more peculiarly and

Council or conſiſtory of the Emperor.

[49] Noodt. ut ſup. Grav. de Rom. Imp. 23—27.

BOOK III.

independently his own, under the character of *Emperor:* but that he exerciſed the latter under many different and inferior titles; and with an *apparent* ſubordination to the eſtabliſhed principles of the conſtitution. That the ſenate, and ſometimes the people, ſtill preſerved the ſhew of being free agents, though, in fact, they were mere inſtruments to give a more legal color to the acts of the prince; who was generally in a condition to inforce obedience, whether they choſe to pay it or not.

Common prudence, however, ſuggeſted to him the more moderate way of ſeeming to act by the advice of his council; which, indeed, was no more than what the multifarious buſineſs of ſuch a vaſt empire made neceſſary. Auguſtus, when placed at the head of it, ſoon found that he ſtood in need of a great deal of official aſſiſtance: all matters therefore of a public nature, as of receiving ambaſſadors, returning anſwers to foreign kings, and ſuch other tranſactions, wherein the majeſty of the ſtate was publicly concerned, he reſerved to the ſenate at large. But, to ſave them the trouble of aſſembling upon more private occaſions, he eſtabliſhed a cabinet council [1], compoſed of the conſuls, of ſeveral other chief magiſtrates, and of a certain number of ſenators, choſen by lot, who were not obliged to attendance for more than ſix months at once; and with theſe he conſulted upon ſuch buſineſs, as he meant afterwards to refer to the judgment of the whole body [2].

Towards the end of his life, being then far advanced in years, and unable to attend the frequent meetings of the ſenate, inſtead of fifteen ſenators for ſix months, he obtained an appointment of

[1] Grav. de Rom. Imp. 17.

[2] "Quo autem lecti probatique et religioſius et minore moleſtia ſenatoria munera fungerentur, ſanxit,—ne pluſquam bis in menſe legitimus ſenatus ageretur, kalendis et idibus: neve Septembri Octobrive menſe ullos adeſſe alios neceſſe eſſet, quam ſorte ductos, per quorum numerum decreta confici poſſent: ſibique inſtituit conſilia ſortiri ſemeſtria, cum quibus de negotiis ad frequentem ſenatum referendis ante tractaret." Suet. in Aug. 35.

twenty for twelve months; who, together with certain other magiſtrates, were to compoſe a kind of legiſlative body; and it was decreed, that all their acts ſhould be as valid, as if ratified by a full ſenate [3].

The utility of this inſtitution being ſo generally acknowledged, it was continued by other ſucceeding princes, under the name of the *Conſiſtory*; being ſupplied by ſeveral of the officers of ſtate, the moſt reſpectable of the patricians, and the moſt eminent profeſſors of the law; by whoſe advice many great improvements were made in the legal ſyſtem. To his particular friends and favorites, Tiberius obtained an addition of twenty principal ſenators [4]; though moſt of theſe ſoon fell a ſacrifice to the cruelty of this capricious tyrant, and, among the reſt, the infamous Sejanus.

From the foregoing paſſages it ſhould ſeem, that the power of chuſing the members of this body, was not intirely veſted in the Emperors; but that they *requeſted* it [5] of the ſenate, who, at leaſt, confirmed the choice, and gave a ſanction to their acts: conſequently, that the authority thus exerciſed by them of making laws, or other decrees, was not derived from any general pre exiſting right; but from the ſpecial favor of the great ſtanding council of the whole nation, as it happened to be ſolicited from time to time [6]. Neither is it clear from hiſtory, whether this privy-council, though often heard of, ever made any regular or permanent part of the conſtitution.

[3] Και συμβουλους, ὑπο τω γηρως (ὑφ' ὑπερ ουδεις το βουλητηριον ετι, πλην σπανιωτατα, συνιφοιτα) μικοσιν ετησιους ᾑτησατο. προτερον γαρ καθ' ἑκατον μια πεντικαιδεκα προσιτιθετο, και προσψηφισθη, παντα ὁσα αν αυτω μετα τε τω Τιβεριω, και μετ' ἐκεινων, &c.—βουλευομενω δοξη, κυρια, ὡς και παση τη γερουσια αρισαντα, ειναι. Dio Caſſ. 56. 28.

[4] "Super veteres amicos ac familiares, "viginti ſibi e numero principum civitatis "*depopoſcerat*, velut conſiliarios in negotiis "publicis. Horum omnium vix duos aut "tres incolumes præſtitit: cæteros, alium alia "de cauſa perculit. Inter quos, cum pluri- "morum clade, Ælium Sejanum." Suet. in Tib. 55. Joſ. Ant. Jud. 18. 7. 6.

[5] Ητησατο, ſays Dio Caſſius, of Auguſtus; *depopoſcerat*, ſays Suetonius of Tiberius; both which words mean, to ſolicit any thing as a matter of favor.

[6] Grav. de Rom. Imp. 17.

This is expreſsly ſaid of Adrian, who choſe his own council, "Quos tamen ſenatus "omnes probaſſet." Spart. in Adr. 18.

Some

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Some of the more tyrannical princes might, perhaps, occaſionally have had recourſe to it, to juſtify their oppreſſive meaſures, or to aſſiſt them in caſes of difficulty; and at other times have laid it aſide, as being a check upon their own arbitrary projects. The reigns of ſome others were ſo very ſhort, that before they were well ſeated in their thrones, they were removed; and, conſequently, could have had no leiſure to attend to any political concerns at all. But it is moſt probable, that the good princes gladly availed themſelves of ſo uſeful a practice; which not only ſecured their authority by this more intimate union with the ſtate; but likewiſe greatly alleviated the fatigues of government, and added weight to their legiſlatorial acts.

Adrian was particularly attentive to this inſtitution, and ſhewed his ſenſe of its utility, by ſelecting the moſt worthy ſenators as aſſeſſors to himſelf in his judicial capacity [7]: and, by the time of his reign, it ſeems to have been grown into an eſtabliſhed cuſtom, for the Emperor, when he took cognizance of cauſes, to aſſemble not only the ſenators, but the knights, together with the other public magiſtrates, and profeſſors of the law, and to deliver his opinion in the preſence of them all [8].

The ſame example was very carefully followed by Antoninus Pius [9], and ſeveral other of his worthy ſucceſſors. Marcus Aurelius paid ſo great a deference to the judgment of his council, that he never undertook any matter of conſequence without their advice; and uſed frequently to ſay, "It was much more equitable that he

[7] "Optimos quoſque de ſenatu in contu-
"bernium Imperatoriæ majeſtatis adſcivit."
Spart. in Adr. 8.

[8] "Erat tunc mos, ut, cum princeps cauſas
"cognoſceret, et ſenatores et equites Ro-
"manos in conſilium vocaret, ſententiam ex
"omnium deliberatione proferret." Id. ib.
"Cum judicaret, in conſilio habuit non
"amicos ſuos aut comites ſolum, ſed ju-
"riſconſultos; et precipue Julium Celſum,
"Salvium Julianum, Neratium Priſcum,
"alioſque." Ib. 18. "Cauſas Romæ at-
"que in provinciis frequenter audivit; ad-
"hibitis conſilio ſuo Conſulibus atque Præ-
"toribus et optimis ſenatoribus." Ib. 22.

[9] "Multa de jure ſanxit: uſuſque eſt ju-
"riſperitis, Vinidio Vero, Salvo Valente,
"Voluſio Metiano, Ulpio Marcello, et Ja-
"voleno." Jul. Cap. in Ant. Pio, 12.

" ſhould be directed by the counſel of ſuch friends, than that ſuch and " ſo many ſhould be governed by his will and pleaſure alone [10]!"

Septimius Severus, as we have already ſeen, though not a good, was certainly a great, prince; and ſhewed high reſpect to all thoſe eminent perſons, who were the beſt qualified to adviſe him in the important art of legiſlation. Alexander Severus followed the ſame laudable example; having an eſtabliſhed council, in whoſe preſence all matters of moment were diſcuſſed, before they were referred to him for his final deciſion; the chief among whom was the famous Ulpian [11]: and, in conſideration of their being conſtantly about the perſon of the prince, they were exempted from all burdenſome offices; and further honored with many high privileges [12].

Thus ſupported, the Emperor became the firſt legiſlative character of the ſtate; and as "Princeps Senatus," or ſpeaker of that auguſt houſe, it was his peculiar buſineſs to propoſe laws to the fathers, in a manner very ſimilar to the antient form of "Rogatio ad "Populum", in the days of the republic. Theſe laws were all received and obeyed as ſo many oracles: and, in later times, it was conſidered as a kind of ſacrilege, even to call in queſtion the judgment of the prince [14]. They are known by the general title of Im-

[10] "Semper ſane cum optimatibus, non "ſolum bellicas res, ſed etiam civiles, "priuſquam faceret aliquid contulit. De-"nique ſententia illius præcipua ſemper "hæc fuit; *æquius eſt, ut ego tot et talium "amicorum conſilium ſequar, quam ut tot et "tales amici meam unius voluntatem ſequan-"tur.*" Jul. Cap. in M. Aur. 22.

[11] "Negotia et cauſas prius a ſcriniorum "principibus, et doctiſſimis juriſperitis et "ſibi fidelibus, quorum primus tunc Ulpi-"anus fuit, tractari ordinarique, atque ita "referri ad ſe præcepit." Æl. Lamp. in Al. Sev. 15. "Fuit præterea illi conſuetudo, "ut ſi de jure aut de negotiis tractaret, ſolos "doctos et diſertos adhiberet." Id. ib. 16. "Thus in a reſcript, he directs, "Secun-"dum reſponſum Domitii Ulpiani—juriſ-"conſulti amici mei." C. 8. 38. 4.

[12] Thus ſays Papinian; "Juriſperitos, "qui tutelam gerere cæperunt, in conſilium "principum aſſumptos, Optimi Maximique "Principes noſtri conſtituerunt excuſandos." D. 27. 1. 30. pr. v. et. D. 4. 4. 11. 2.

[13] Grav. de Rom. Imp. 21.

[14] Thus ſay the Emperors Gratian, Valentinian, and Theodoſius, who were yet generally eſteemed as good princes; "Diſ-"putare de principali judicio non oportet: "ſacrilegii enim inſtar eſt dubitare, an is "dignus ſit, quem Princeps elegerit." C. 9. 29. 3.

perial

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perial Conſtitutions, and were uſually enacted and promulgated in the three following ways [15].

Reſcripts.

1. By *Reſcript*, "quod per epiſtolam conſtituit [16];" which he ordained by his letter, to any governor or judge of a diſtant province, or court, who deſired to take his opinion upon ſome point of law, which was difficult or ambiguous. Such caſes were likewiſe often ſtated and preſented to him by the parties themſelves, in petitions, uſually called "*Libelli Supplices*;" a practice introduced by Julius Cæſar [17], and continued by Auguſtus and moſt of his ſucceſſors, in order to obviate the inconvenience of being taken by ſurprize, and of being obliged to anſwer queſtions without mature deliberation [18]. The Emperor, therefore, having conſidered the caſe either alone, or, more frequently, in conjunction with his council, delivered or ſent back his ſentiments in writing; which became law for the future, either generally or ſpecially, according to the particular nature of the matter in iſſue [19].

2. The

[15] "Quodcunque Imperator *per epiſtolam conſtituit*, vel *cognoſcens decrevit*, vel *edicto præcepit*, legem eſſet conſtat." I. 1. 2. 6. And again, ſomewhat more particularly, "Quodcunque igitur Imperator per epiſtolam et ſubſcriptionem ſtatuit, vel cognoſcens decrevit, vel de plano interlocutus eſt, vel edicto præcepit, legem eſſe conſtat; hæc ſunt quas vulgo Conſtitutiones appellamus." D. 1. 4. 1. 1.

[16] Grav. O. J. 1. 123, 124.

[17] Λεγεται δε και το δια γραμματων τοις φιλοις ὁμιλειν, Καισαρα πρωτον μηχανησασθαι, την κατα προσωπον εντευξιν ὑπερ των επειγοντων, τω καιρω δια το πληθος ασχολιων, και της πολεως το μεγεθος μη περιμενοντος. Plut. in Jul. Cæſ. p. 118.

[18] "Sermones quoque cum ſingulis, —— graviores, non niſi in ſcriptis, et e libello habebat: ne plus minuſve loqueretur extempore." Suet. in Aug. 84. And again, "Sejanus – componit ad (Tiberium) Cæſarem codicillos. Moris quippe tum erat, quanquam præſentem, ſcripto adire." Tac. Ann. 4. 39.

[19] The effect and extent of the Imperial laws are thus very particularly deſcribed by the Emperors Theodoſius and Valentinian, in the following addreſs to the ſenate; "Leges ut generales ab omnibus æquabiliter in poſterum obſerventur, quæ vel miſſæ a nobis ad venerabilem cœtum oratione conduntur, vel inſerto *edicti* vocabulo nuncupantur: ſive eas nobis ſpontaneus motus ingeſſerit, ſive precatio, ſive relatio, vel lis mota legis occaſionem poſtulaverit. Nam ſatis eſt *edicti* eas nuncupatione cenſeri, vel per omnes populos judicum programmatibus divulgari: vel expreſſius continere, *Quod principes cenſuerint ea, quæ in certis negotiis ſtatuta ſunt, ſimilium quoque cauſarum fata componere.* Sed et ſi *Generalis Lex* vocata eſt, vel *ad omnes*

2. The ſecond method was by *Decree*, "Quod cognoſcens decrevit;" i. e. a ſentence paſſed by the Emperor himſelf, upon a public hearing of a cauſe in a court of juſtice; where ſeveral of theſe princes, as is well known, uſed to ſit in perſon, aſſiſted by lawyers, as our Engliſh monarchs did of old in the King's Bench. Theſe Decrees were collected, about the beginning of the third century, into ſix books, by Julius Paulus, intitled "Libri Receptarum Sententiarum," of which five only are now extant [20]. Decrees.

3. The laſt was by *Edict*, "Quod Edicto præcepit;" i. e. mere voluntary conſtitutions, enacted and publiſhed for ſome general purpoſes, as occaſion required; they became therefore univerſal law, under the general name of "Lex Edictalis" [21]. The word *Edict*, however, is likewiſe a generical term, including every one of the foregoing ſpecies; and is often underſtood in that larger ſenſe, in various parts of the "Corpus Juris Civilis." Edicts.

Such were the chief modes of enacting the Imperial laws, and ſuch the general courſe of legiſlation during the preſent period: and though the power from whence theſe laws originated was, in effect, abſolute, yet many of them do high honor to their authors.

No rule of ſucceſſion having ever been eſtabliſhed for ſupplying the vacant throne, it was open to the competition of every great man in the empire, who had either intereſt or merit ſufficient to ſupport his pretenſions; conſequently, out of ſo large a field, real virtue had a fair chance of being ſometimes diſtinguiſhed; and, in fact, often received its due reward. The private and even humble ſtations, in which ſe-

"*nes* juſſa eſt *pertinere*, vim obtineat edicti: "interlocutionibus, quas in uno negotio "judicantes protulimus, vel poſtea proferemus, non in commune præjudicantibus: "nec his, quæ ſpecialiter quibuſdam conceſſa "ſunt civitatibus, vel provinciis, vel corporibus, ad generalitatis obſervantiam pertinentibus." C. 1. 14. 3.

[20] Grav. O. J. 1. 122. Theſe are to be found in moſt editions of the "Corpus Juris Civilis."

[21] "Hac *edictali lege* in perpetuum valitura ſancimus, &c." C. 5. 9. 6. pr. Grav. O. J. 1. 120.

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veral of theſe princes were born; the virtuous and philoſophic courſe of education in which they had been early trained up; had fortified their hearts againſt the corruption of courts, and the faſcinations of power; and having duly inſtructed them in the rights of ſubjects, gave them juſt and moderate ideas of the duties of ſovereigns. Hence, their laws, not leſs than their memories, are become immortal; and are received by all civilized nations of later ages, not merely as private, municipal obligations, but as principles of univerſal juſtice.

On the other hand, as the characters of theſe princes often varied, the complexion of the laws changed with them. Many of their inſtitutions are juſtly chargeable with partiality; for which reaſon ſome very eminent lawyers, Paulus in particular, doubted of their authority, unleſs they had been received and confirmed by long uſage[22]. The Emperor Macrinus likewiſe, who bore the character of an expert lawyer, expreſſed a deſign of aboliſhing the reſcripts of his predeceſſors; thinking it an indignity to the Roman legiſlature, that the arbitrary will of ſuch ignorant princes as Commodus and Caracalla ſhould be honored with the name of law, when even Trajan himſelf never choſe to give anſwers to petitions of this nature, leſt what ſhould be thus granted as a ſpecial favor, ſhould be extended to other caſes[23].—Thus will the force of truth, and ſenſe of propriety, often ſtrike even the moſt obdurate tyrants.

The great and wiſe Conſtantine was conſcious of the ſame radical defects of theſe laws, which were made only for private and parti-

[22] Grav. de Rom. Imp. 20.

[23] "Fuit in jure non incallidus, adeo ut "ſtatuiſſet omnia reſcripta veterum princi- "pum tollere, ut jure, non reſcriptis age- "retur, nefas eſſe dicens, leges videri Com- "modi et Caracallæ, et hominum imperi- "torum voluntates, cum Trajanus nun- "quam libellis reſponderit, ne ad aliàs "cauſas facta præferrentur, quæ ad gratiam "compoſita viderentur." Jul. Cap. in Macr. 13.

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cular purpoſes; and therefore ordained, that reſcripts, however obtained, ſhould be of no validity in oppoſition to the antient law of the ſtate; by which only the judges were directed to regulate their determinations [24]. So great attention and reverence likewiſe did ſome ſucceeding princes ſhew to the general voice of the legiſlature, that if any perſon attempted, by a ſpecial petition, to obtain a reſcript, to enable him to tranſgreſs the laws, he was puniſhed by the loſs of a third of his patrimony, together with ſome other very ſevere penalties [25].

From hence it will appear, that the *civil* conſtitution of Rome ſtill bore many marks of its original freedom; and that, with regard to private and perſonal rights, the ſubjects enjoyed the benefit of their primitive, fundamental laws, in as ample a manner as in the times of the republic: that the authority of theſe laws was univerſal, and extended even to the Imperial family, though inſolently diſtinguiſhed by the title of *Divine* [26]: and that the Emperors, with all that parade of arbitrary power, and actual exerciſe of the right of legiſlation, enjoyed thoſe high privileges only in communication with, and not in excluſion of, the ſenate [27]; which ſtill continued to be the great oracle of the ſtate, and the viſible repreſentative of the majeſty of the commonwealth [28].

[24] "Contra jus reſcripta non valeant, "quocunque modo fuerint impetrata. Quod "enim publica jura præſcribunt, magis ſe- "qui judices debent." Cod. Theod. 1. 2.

[25] Thus ſay the Emperors Gratian, Valentinian, and Theodoſius, "Si quiſquam "ſpeciali ſupplicatione eliciendum aliquod "reſcriptum tentaverit, ut tranſire ei for- "mam liceat ſtatutorum, tertiâ patrimonii "parte multetur, et damnatus ambitus cri- "mine, maneat infamis." C. 1. 16.

[26] "Omnes legibus regantur, etiam ſi ad "Divinam Domum pertineat." C. 1. 14. 10.

[27] "Quamvis ſenatuſconſultum perpetuam "per ſe obtineat firmitatem, tamen noſtris "legibus etiam idem proſequimur." C. 1. 16.

[28] Grav. de Rom. Imp. 21.

CHAP. VIII.

State of the "Reſponſa Prudentum," *and of the Profeſſion of the Law under the Emperors.—Different Sects of the Law.——Sabinians.—Proculeians.*—Medii et Herciſcundi.—*Eminent Lawyers.*

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IT is now time to reſume the conſideration of thoſe other ſources of the Roman laws, which, though much contracted by the predominancy of the Imperial power, were not wholly annihilated, but ſtill continued to enjoy a reſpectable ſhare of their antient influence and authority. We have already taken notice of the reverence that was ſhewn to the great lawyers and orators, in the more early times of the republic; and how their opinions and reſponſes grew inſenſibly into eſtabliſhed law, and were received, under that character, by the ſilent approbation of an illiterate people [1]; but without any other ſanction, than what accrued to them from the exalted rank of their authors [2], and their own intrinſic equity and merit.

Great however as the reſpect was, then entertained for the determinations of theſe eminent lawyers, they had not yet acquired ſuch an obligatory quality, as to make them binding upon a court of juſtice: on the contrary, they were expoſed to the attacks and animadverſions of pleaders and orators, who might, and often did, overturn their force [3]; conſequently, they amounted only to an in-

[1] Grav. O. J. 1. 41.

[2] Thus ſays Marcus in his dialogue with Atticus, "Summos fuiſſe in civitate noſtra "viros, qui id interpretari populo, et reſpon- "ſitare ſoliti ſunt." Cic. de L. L. 1. 4.

[3] "Veſtra reſponſa, atque decreta et ever- "tuntur ſæpe dicendo, et ſine defenſione "oratoris firma eſſe non poſſunt." Cic. pro Mur. 13. And again, "Neque enim fieri "poteſt, ut aliud judicari de jure, aliud re- "ſponderi oporteat: nec ut quiſquam juris "numeretur peritus, qui id ſtatuat eſſe jus, "quod non oporteat judicari." Cic. pro Cæc. 24.

ferior

ferior ſpecies of laws, depending much more upon their own inherent excellence, than upon any official authority of the perſons from whom they proceeded.

But Auguſtus, whoſe long and peaceable reign left him at full leiſure to cultivate and encourage every polite and uſeful ſcience, eſteemed juriſprudence, of all others, the moſt worthy of his protection. The general liberty of giving anſwers to difficult queſtions, which every one, who preſumed upon his own abilities, uſed heretofore to exerciſe, had been attended with numerous inconveniencies; and had too frequently corrupted the purity of the antient law, by the introduction of many whimſical and overſtrained ſubtleties [4]. It was a dangerous temptation, likewiſe, to many ignorant ſelf-ſufficient men [5] to obtrude their own crude opinions upon courts of juſtice, and thus to erect themſelves into a kind of public lawgivers: all which, when added to the general confuſion of the times, had much obſcured the original ſplendor, and leſſened the conſequence, of this important and honorable profeſſion [6]. This wiſe and cautious prince, therefore, found it neceſſary to reſtrain this privilege to ſuch only as were firſt approved and authoriſed by himſelf [7].

[4] Cum permulta præclarè legibus eſſent "conſtituta, ea juriſconſultorum ingeniis "pleraque corrupta ac depravata ſunt." Cic. pro Mur. 12.

[5] Thus Marcus is made to obſerve to Atticus, "Nec vero eos qui ei muneri præfue-"runt, univerſi juris expertes fuiſſe exiſti-"mo." Cic. de L. L. 1. 4.

[6] "Thus Cicero complains, "Cum mul-"ta præclara majorum, tum quod optime "conſtituti juris civilis ſummo ſemper in "honore fuit cognitio atque interpretatio: "quam quidem ante hanc confuſionem tem-"porum in poſſeſſione ſuâ principes retinue-"runt: tunc ut honores, ut omnes digni-"tatis gradus, ſic hujus ſcientiæ ſplendor "delectus eſt." Off. 2. 19.

[7] "Ante tempora Auguſti publicè reſpon-"dendi jus non a principibus dabatur: ſed "qui fiduciam ſtudiorum ſuorum habebant, "conſulentibus reſpondebant. Neque re-"ſponſa utique ſignata dabant: ſed ple-"rumque judicibus ipſi ſcribebant, aut teſta-"bantur, qui illos conſulebant. Primus "Divus Auguſtus, ut major juris autoritas "haberetur, conſtituit, ut ex auctoritate "ejus reſponderent, et ex illo tempore peti "hoc pro beneficio cæpit." D. 1. 2. 2. 47.

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It is not improbable likewiſe, that Auguſtus had a ſtill further view in this ſtroke of policy; which was, to ſecure to himſelf an intire command over the laws, and to bend them to the new principles of government, which were now to be introduced[8]. To avoid, therefore, alarming the jealouſies and ſuſpicions of the people, by any violent and open alteration of the antient legal conſtitution, he more prudently endeavoured to draw over the great profeſſors of the law to his intereſt, by the irreſiſtible charms of honors and rewards; and, by inveſting them with the ſupreme power of interpretation, he by degrees leſſened the conſequence of the magiſtrates, and reduced them to a ſtate of abſolute dependence upon theſe great oracles of juſtice, without appearing to depart from thoſe familiar forms which had received the ſanction of long uſage[9]. But, however he might have been influenced herein by perſonal or political motives, like a truly magnificent and liberal prince, he founded a library in the temple of Apollo Palatine, and endowed it with the beſt collection of law books which the learning of thoſe times afforded, for the general uſe of ſuch as choſe to purſue that courſe of ſtudy[10].

The ſame policy ſeems to have been adopted by the generality of his ſucceſſors[11]; though Caligula, who, like moſt tyrants, hated thoſe laws which reſtrained the exerciſe of his own arbitrary will, threatened to aboliſh the whole ſcience at once[12]. It does not appear, however, that he ever attempted to carry theſe menaces any further into execution; but the profeſſion ſtill continued to flouriſh,

[8] Thus ſays the moſt diſcerning of all the Roman hiſtorians, "Cæſar dux reliquus— "inſurgere paulatim, munia ſenatus, ma- "giſtratuum, *legum* in ſe trahere, nullo ad- "verſante." Tac. Ann. 1. 2.

[9] Grav. O. J. 1. 43. & Hein. Ant. Rom. 1. 2. 39.

[10] From this circumſtance ariſes that expreſſion of the Roman ſatiriſt,

"Juriſque peritus Apollo."

Juv. Sat. 1. 128.

[11] "Ergo Sabino conceſſum eſt a Tiberio "Cæſare, ut populo reſponderet." D. 1. 2. 2. 47.

[12] V. p. 256.

and

and to be held in high eſtimation; and was honored by ſome new marks of diſtinction by Hadrian; who directed this power to be conferred, not upon every petitioner, but reſerved it as a voluntary compliment, to be paid by the prince himſelf to ſuperior merit [13].

Sects of the law.

The Roman lawyers, being generally men of the higheſt rank and education, were much addicted to ſpeculation, and were too fond of mixing the fanciful refinements of philoſophy with the plain dictates of natural juſtice [14].

This was particularly the caſe with thoſe who were attached to the Stoic philoſophy; a ſect juſtly charged with arrogance and ſelf-conceit, and eager to intermeddle with the concerns of temporal policy [15]. The conſequence of this was a great and, ſometimes, irreconcilable diverſity of opinion concerning the common rights of mankind, and the various obligations of civil ſociety; which, in time, introduced two very remarkable ſects into the profeſſion of juriſprudence [16]; well known by the names of Sabinians and Proculeians [17].

Sabinians. Atteius Capito.

The father of the Sabinians was Atteius Capito, a ſcholar of Ofilius. He flouriſhed under Auguſtus and Tiberius; was a very zealous adherent to their party, and by the dint of too ſervile flattery, obtained the conſulſhip from the former, and ſeveral other honorable marks of diſtinction from both [18]. Though he readily

[13] "Ideo optimus Princeps Hadrianus, "cum ab eo Viri Prætorii peterent, ut ſibi "liceret reſpondere, reſcripſit eis, *hoc non "peti ſed præſtari ſolere: et ideo ſi quis "fiduciam ſui haberet, delectari ſe: populo "ad reſpondendum ſe præpararet.*" D. 1. 2. 2. 47.

[14] Grav. O. J. 1. 45.

[15] "Stoicorum arrogantia, ſectaque, quæ "turbidos, et negotiorum appetentes fa-"ciat." Tac. Ann. 14. 57.

[16] Grav. O. J. 1. 46.

[17] For the ſubject of this chapter the reader is referred to D. 1. 2. 2. 47. to Grav. O. J. 1. 44—104, and to another learned treatiſe, "De Sectis Sabinianorum et Pro-"culeianorum," by Goth. Maſcovius, a celebrated profeſſor of civil law at Leipſic.

[18] "Capito infignitior infamia fuit: quod "humani divinique juris ſciens, egregium "publicum, et bonas domi artes dehoneſta-"viſſet." Tac. Ann. 3. 71.

"Capito Atteius—principem in civitate "locum ſtudiis civilibus aſſecutus—conſula-"tum ei acceleravit Auguſtus—Capitonis "obſequium dominantibus magis probaba-tur." Id. ib. 75.

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fell in with the ſervile humor of the times, he yet profeſſed a very ſteady attachment to the antient laws and conſtitutions of the republic [19], and inflexibly oppoſed all far-fetched and novel interpretations [20]. He was eſteemed a very able ſcholar, and was the author of many works, particularly upon Pontifical Law, and the forms of judicature; but none of them have reached to later times, and his name is ſeldom mentioned even in the Digeſt.

Maſurius Sabinus.

Capito was followed by Maſurius Sabinus, a perſon of ſo low extraction, that he was chiefly ſupported by the liberality of his ſcholars and auditors; but ſo eminent for his learning [21], that he was raiſed at laſt to the equeſtrian order; and was the firſt who was publicly authoriſed by Auguſtus to give anſwers in law, which privilege was confirmed to him by Tiberius [22]; and from hence, probably, the whole ſect was diſtinguiſhed by his name.

Caſſius Longinus.

To him ſucceeded C. Caſſius Longinus, of the family of Caſſius, one of the murderers of Julius Cæſar. He lived from the time of Tiberius to that of Veſpaſian, and bore ſome of the higheſt offices, both in war and peace; but had too much integrity to be eſteemed in thoſe ages of lawleſs violence; and was, therefore, driven into baniſhment by Nero, but recalled by Veſpaſian, and died in peace in his own country [23]. He always expreſſed a high regard for the primitive conſtitution, and thought that the modern innovations in the legal ſyſtem were ſeldom productive of any material improve-

[19] "Atteius Capito in his, quæ ei tradita "fuerunt, perſeverabat." D. 1. 2. 2. 47.

[20] Grav. O. J. 1. 74. Maſc. ut ſup. 1. 3.

[21] Perſius conſiders his opinion as the voice of the law itſelf:

"Cur mihi non liceat juſſit quodcunque "voluntas,
"Excepto ſi quid Maſurî rubrica notavit."
Sat. 5. 89.

[22] "Atteio Capitoni Maſurius Sabinus "ſucceſſit—in equeſtri ordine fuit, et publice "primus ſcripſit, poſteaque hoc cæpit bene-"ficium dari a Tiberio Cæſare.—Sabino "conceſſum eſt a Tiberio Cæſare, ut populo "reſponderet; qui in equeſtri ordine jam "grandis natu, et fere annorum quinquaginta "receptus eſt: huic nec amplæ facultates fu-"erunt, ſed plurimum a ſuis auditoribus ſuſ-"tentatus eſt." D. 1. 2. 2. 47.

[23] D. 1. 2. 2. 47. Grav. O. J. 1. 82. Maſc. ut ſup. 2. 2.

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ment [24]. His reputation among the Sabinians was ſo great, that from him the ſect ſometimes bore the name of Caſſian.

Cælius Sabinus.

Of the ſame ſchool was Cælius Sabinus, who flouriſhed under Otho and Veſpaſian; and from whom the title of Sabinians is ſuppoſed by ſome, though erroneouſly, to have been derived [25].

Javolenus, &c.

From hence, to the time of Antoninus, lived Priſcus Javolenus, Alburnius Valens, Tiburnius Valens, Tuſcianus and Salvius Julianus, all of the ſame perſuaſion; the laſt of which was grandfather of Didius Julianus, himſelf alſo eminent in that profeſſion, and wealthy enough to purchaſe the imperial crown [26].

Proculeians.

Trebatius,

The chief of the Proculeians was Anſtitius Labeo. He had been a pupil of Trebatius, a perſon of the moſt reſpectable character, and well known by his intimacy with Cicero, and all the other eminent men of thoſe times; as well as with Auguſtus himſelf [27], who did him the honor to conſult him in moſt legal queſtions of moment and difficulty. It may be a matter of curioſity to ſome of our readers to be informed, that the introduction of *codicils*, an invention of infinite ſervice in the conveyance of private property, is aſcribed to the ſame author. By the antient Roman law, the many formalities requiſite to the validity of a ſolemn teſtament, which all perſons, except ſuch as were in actual military ſervice, were bound to obſerve, rendered an act of this kind a very operoſe buſineſs; and, in various unexpected emergencies, impracticable. But it happened that Lucius Lentulus, a nobleman of conſequence about the court, being

the firſt inventor of codicils.

[24] "Ea tempeſtate Caſſius cæteros præminebat peritia legum." Tac. Ann. 12. 12. Upon a particular occaſion he thus, but with great modeſty, delivered his opinion in the ſenate: "Sæpenumero, P. C. in hoc "ordine interfui, cum contra inſtituta et "leges majorum nova ſenatus decreta poſtularentur: neque ſum adverſatus. Non "quia dubitarem ſuper omnibus negotiis "melius atque rectius olim proviſum, et quæ "converterentur in deterius mutari; ſed ne "nimio amore antiqui moris ſtudium meum "extollere viderer." Tac. Ann. 14. 43.

[25] D. 1. 2. 2. 47. Grav. O. J. 1. 84. Maſc. ut ſup. 2. 3.

[26] D. 1. 2. 2. 47. Grav. O. J. 1. 45. 84, 85. Maſc. ut ſup. 2. 4. ad fin.

[27] Grav. O. J. 1. 66.

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abſent upon a journey in Africa; and finding a neceſſity of making ſome additions to his will, which, according to the law, as it then ſtood, would not be valid, he applied to the Emperor to take his caſe into conſideration; who having adviſed with ſeveral learned men, Trebatius in particular; and being well convinced of the equity of the caſe, and of the many good conſequences of ſuch an improvement, gave his immediate ſanction to their uſe; from which time they have become univerſal [28].

Antiſtius Labeo.

From the manner in which Horace [29] and others ſpeak of this eminent profeſſor, he appears to have been a perſon of great erudition and gravity; and to have paid a religious veneration to the antient laws of the conſtitution. But his diſciple Labeo was of a ſomewhat different turn. He had a warm and lively imagination, and affected a profound knowledge in the primitive language of the Romans; by the help of which he diſcovered many latent and abſtruſe meanings in the laws, which often gave a very different ſenſe to them, from what they had before ever borne. Such novel conceits, and wild interpretations, were naturally productive of great confuſion and uncertainty; and cauſed him to be conſidered and repreſented as one perfectly out of his mind, even to a proverb; ſo as to

[28] "Ante Auguſti tempora conſtat, codicillorum jus in uſu non fuiſſe: ſed primus Lucius Lentulus, ex cujus perſona etiam fideicommiſſa eſſe cæperunt, codicillos introduxit. Nam, cum decederet in Africa, ſcripſit codicillos teſtamento confirmatos, quibus ab Auguſto petiit per fideicommiſſum, ut faceret aliquid: et, cum D. Auguſtus voluntatem ejus implêſſet, deinceps reliqui, ejus auctoritatem ſecuti, fideicommiſſa præſtabant: et filia Lentuli legata, quæ jure non debebat, ſolvit. Dicitur autem Auguſtus convocâſſe ſapientes viros, interque eos Trebatium quoque, cujus tunc auctoritas maxima erat, et quæſiſſe an poſſet recipi hoc, nec abſonans a juris ratione codicillorum uſus eſſet? et Trebatium ſuaſiſſe Auguſto, quod diceret, utiliſſimum et neceſſarium hoc civibus eſſe, propter magnas et longas peregrinationes, quæ apud veteres fuiſſent; ubi, ſi quis teſtamentum facere non poſſet, tamen codicillos poſſet. Poſt quæ tempora, cum et Labeo codicillos feciſſet, jam nemini dubium erat, quin codicilli jure optimo admitterentur." I. 2. 25. pr.

[29] Sat. 2. 1.

become

become the ſtandard of compariſon for any perſon, who was arrived at the extreme pitch of extravagance and abſurdity [30].

Great allowances, however, muſt be made for the prejudices of this acute and ſpirited ſatiriſt; who may eaſily be ſuppoſed to have contracted a diſlike to him, not only as he was a Stoic, but, eſpecially, as embarked in the oppoſite faction to his patron, Auguſtus. Though, with all this, he was a perſon of the moſt incorrupt integrity; very warmly attached to the cauſe of republican liberty; and of great weight and authority with the whole people [31].

Nerva.

The followers of Labeo were the Nervas, father and ſon. The former a great favorite of Tiberius, though by no means an abettor of his tyranny: but, as he had not influence enough over ſuch an abandoned monſter, to effect a reformation, rather than be a witneſs of thoſe evils which he could not prevent, he determined to put an end to his own life, by a voluntary abſtinence from food [32]. The ſon was ſo remarkable for the quickneſs and maturity of his genius, that he began to diſtinguiſh himſelf, and to give anſwers, at the age of ſeventeen. He was father of the Emperor of the ſame name.

Licinius Proculus.

Cotemporary with theſe was Licinius Proculus; ſuppoſed to have been a great intimate and partizan of Otho [33]; but, whoever he was, his authority in his profeſſion was ſo great, that the diſciples of Labeo were from him denominated Proculeians [34].

Pegaſus.

Another bright ornament of the ſame ſect, to which likewiſe he imparted his name, was Pegaſus, "Præfectus Urbi," and Conſul,

[30] "Labeone inſanior inter "Sanos dicatur." Hor. Sat. 1. 3. 82.

[31] Grav. O. J. 1. 73. "Labeo incorruptâ "libertate, et ob id fama celebratior." Tac. Ann. 3. 75.

[32] "Cocceius Nerva, continuus principis, omnis divini humanique juris ſciens, integro "ſtatu, corpore inlæſo, moriendi conſilium "cæpit." Id. ib. 6. 26. D. 1. 2. 2. 47. Grav. O. J. 1. 45. 75. Maſc. ut ſup. 3. 1.

[33] "Adjungitur Licinius Proculus, intimâ "familiaritate Othonis, ſuſpectus conſilia "ejus foviſſe." Tac. Hiſt. 1. 46.

[34] D. 1 2. 2. 47. Grav. O. J. 1. 45. 76. Maſc. ut ſup. 3. 2.

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under Veſpaſian; honors to which he raiſed himſelf by his perſonal merit, from a very obſcure and humble ſtation. He was ſo deeply learned, that he was called a book rather than a man; and was not leſs remarkable for his integrity than his erudition [35].

Celſus.

After him followed Juventius Celſus, and his ſon Julius Celſus. The firſt began to flouriſh under Domitian; was concerned in a conſpiracy againſt the life of that tyrant; and, being diſcovered, eſcaped the puniſhment by a ſtratagem [36]. The ſecond was one of the privy council and aſſeſſors to Adrian [37], and lived to the reign of Antoninus Pius [38].

Neratius Priſcus.

The laſt of the Proculeian ſchool was Neratius Priſcus; of whom Trajan entertained ſo high an opinion, that it was expected he would have made him his ſucceſſor in preference to Adrian [39]; of which competition this great prince was ſo far from being jealous, that he aſſumed him afterwards into the number of his choiceſt counſellors [40].

Theſe factions in the profeſſion of juriſprudence continued in their full vigor, and were ſupported by great authorities on both ſides, till the reign of Adrian, or Antoninus Pius; during all which period theſe eminent lawyers were uſed to ſend their opinions in writing to the judges, who were bound to determine according to

[35] D. 1. 2. 2. 47. Grav. O. J. 1. 77. Maſc. ut ſup. 3. 5. He is deſcribed under this character by a very honeſt and impartial ſatiriſt:

"Optimus, atque
"Interpres legum ſanctiſſimus."
Juv. Sat. 4. 78.

[36] Ιουβεντιος Κελσος, συνομοσας τι ανα πρωτους μετα τινων επ' αυτω, και καληγορηθεις επι τουτω, θαυμαστως εσωθη. Dio Caſſ. 67. 13.

[37] "Cum judicaret, in conſilio habuit non "amicos ſuos aut comites ſolum, ſed juriſ- "conſultos, et præcipue Julium Celſum, &c." Spart. in Hadr. 18.

[38] D. 1. 2. 2. 47. Grav. O. J. 1. 78, 79. Maſc. 3. 6. 7.

[39] "Frequens ſane opinio fuit, Trajano "id animi fuiſſe, ut Neratium Priſcum, non "Hadrianum, ſucceſſorem relinquerit; multis amicis in hoc conſentientibus; uſque "eo, ut Priſco aliquando dixerit: *commendo tibi provincias, ſi quid mihi fatale "contigeret.*" Spart. in Hadr. 4.

[40] D. 1. 2. 2. 47. Grav. O. J. 1. 80. Maſc. 3. 8.

thoſe

thoſe dictates, even without any reaſon aſſigned for them [41]. It often happened, likewiſe, that judges themſelves wanted advice and aſſiſtance in caſes of doubt; and for that purpoſe, uſed to apply to theſe learned profeſſors, who returned their anſwers in writing; many of which are ſtill preſerved in the Digeſt, moſt probably, in the exact form of words wherein they were originally delivered.

From this time, therefore, the "Reſponſa Prudentum" began to aſſume a greater air of dignity and importance, than they had before enjoyed under the republic. Not that they were, in every reſpect, of the ſame univerſal authority, with thoſe laws that were enacted by the conſtitutional, legiſlative powers; for, being interpoſed in particular caſes, they were law only with regard to thoſe: and, in this light, were of ſimilar force with the Reſcripts of the Emperor, which ſeldom went further than the point immediately in queſtion[42]; or, if they happened, on a future occaſion, to be applied to any other caſes, it was only under the character of principles of equity, not of precepts of law. Thus ſtood they during the firſt four centuries of the Imperial government, till adopted into the general body of laws, by the Emperors Theodoſius and Valentinian; who confirmed the writings of many of the moſt eminent lawyers by name[43]. They were afterwards received, in a ſtill more authoritative manner, by Juſtinian; and are diſperſed, in great plenty, through all parts of that valuable work called the Digeſt.

41 "Etiam ſine probationibus ipſe monentis auctoritas prodeſt, quomodo juriſconſultorum valent reſponſa, etiamſi ratio non redditur." Sen. ep. 94.

"Reſponſa prudentum ſunt ſententiæ et opiniones eorum, quibus permiſſum erat de jure reſpondere: nam antiquitus conſtitutum erat, ut eſſent, qui jura publice interpretarentur, quibus a Cæſare jus reſpondendi datum eſt, qui juriſconſulti appellabantur: quorum omnium ſententiæ et opiniones eam auctoritatem tenebant, ut judici recedere a reſponſis eorum non liceret, ut eſt conſtitutum." L. 1, 2. 8.

42 Maſc. ut ſup. 2. 1. 5, 6.

43 "Papiniani, Pauli, Gaii, Ulpiani atque Modeſtini ſcripta univerſa firmamus." Cod. Theod. 1. 4.

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Prætorian Edicts.

The edicts of the Prætors, and other magiſtrates, with another inferior ſpecies of law, under the title of "Jus Honorarium," as far as they were admitted in the republic, have been explained in a former part of this work[44]. They were continued likewiſe under the Imperial government; but were ſo much controuled and directed by the opinions of the lawyers, that they loſt the greateſt part of their antient dignity; and were preſerved in ſo careleſs and perplexed a ſtate, that, by the time of Hadrian, it became extremely difficult to aſcertain either their dates, or intentions. This prince therefore, not leſs eminent for his political than his military talents[45], was deſirous of diffuſing order and regularity through every part of the conſtitution. He accordingly projected the noble deſign of reducing the whole Roman law into one regular ſyſtem; and began by collecting the antient Prætorian Edicts, ſuch at leaſt as had ſtood the teſt of time and experience, and were found to be of the moſt extenſive utility. This work was executed, with many material additions and improvements, by the famous Salvius Julianus, already mentioned, and called "Edictum Perpetuum;" becauſe it then received a perpetual authority, which, till this time, was only annual and precarious. Nothing now remains of this work but ſome fragments, which have been collected by the induſtry of modern compilers, and are preſerved in moſt of the editions of the "Corpus Juris Civilis[46]."

Edictum Perpetuum.

This judicious policy of Hadrian had eſtabliſhed a more uniform rule of proceeding in the courts of juſtice, and, conſequently, the ferment of contention began to ſubſide. Practitioners now ſaw their way more clearly through the intricate mazes of ſubtle diſputation; and the partizans of either ſects came to entertain

[44] B. 2. c. 6.

[45] "Diſciplinam civilem non aliter tenuit, quam militarem." Spart. in Hadr. 22.

[46] Grav. O. J. 1. 38. Maſc. ut ſup. 7. 1, 2.

more

more favorable and liberal notions of each other's tenets; they ſubmitted their mutual ſentiments to a more free and promiſcuous diſcuſſion; and, in caſes of real difficulty, all defects were ſupplied either by the interpretation of the prince himſelf [47], aſſiſted by his council, or by ſome new conſtitution or reſcript adapted to the purpoſe [48]; which practice, begun by Hadrian, was obſerved by the beſt and wiſeſt of his ſucceſſors [49].

The ſelf-ſufficiency of theſe ſectariſts being thus effectually humbled, all poſſible diligence was uſed to reconcile thoſe contrarieties, with which the late inveterate ſpirit of controverſy had long disfigured the grave and venerable mien of the antient legal ſyſtem. Theſe friends of moderation are diſtinguiſhed, among the commentators of later ages, by the title of "Medii et Herciſcundi," becauſe they endeavoured to purſue the middle track between the two extremes [50]. But, as the flame of diſputation is not eaſily extinguiſhed, in the heated imaginations of the profeſſors of this litigious ſcience, many deſpiſed this pacific ſcheme, and continued obſtinate in their adherence to the tenets of their reſpective parties. Theſe inconveniences were ſtill increaſed and made immortal, by the careleſſneſs of Tribonian, the compiler of the Digeſt, who diſregarded the expreſs directions of Juſtinian; which were, "to be particularly attentive to preſerve "ſuch opinions only of the antient lawyers, as had ſtood the teſt of "time and experience; and to inſert none that might oppoſe or

Medii et Herciſcundi.

[47] "De his, quæ primo conſtituuntur, aut "interpretatione, aut conſtitutione optimi "principis ſtatuendum eſt." D. 1. 3. 11.

[48] Frequent inſtances of theſe are ſtill preſerved in the Digeſt, of which the following, by the Emperors M. Aurelius and Ælius Verus, who are generally called "Divi "Fratres," may ſerve as a ſpecimen. Having been conſulted upon a very difficult queſtion, concerning which there had been great difference of opinion among the lawyers, they add, "Sed cum et ipſo Mæciano, et aliis "amicis noſtris, juriſperitis, adhibitis, ple"nius tractaremus, &c." D. 37. 14. 17.

[49] Maſc. ut ſup. 7. 5. This has already been obſerved of Alexander Severus. P. 336.

[50] Maſc. ut ſup. 8. 1, 2.

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deſtroy the force of each other[51]." In conſequence of the neglect of this wiſe injunction, many traces of the old diſſenſions are ſtill viſible, in various parts of that comprehenſive, and, otherwiſe excellent, collection[52]; which will now always remain in the ſame perplexed ſtate, for the perpetual emolument of practitioners; who muſt ever commemorate, with extreme gratitude, *the glorious uncertainty of the law.*

Caius.

Among the eminent profeſſors who lived after the time of Hadrian, and were the chief patrons of this conciliatory plan, the firſt was Caius, who was probably born towards the end of that reign; began to make a figure under Aurelius; and continued in high reputation to the time of Caracalla. He was the author of an Inſtitute of the Roman Laws, in three, or, as ſome ſay, four books; from which Juſtinian borrowed a conſiderable part of his own, and therefore very properly calls him "Caius Noſter[53];" from his having formed the firſt plan of that conciſe and elegant epitome, which that prince, in after-ages, ſo ſucceſsfully adopted and improved[54].

Scævola.

Another very diſtinguiſhed character of the ſame age was Cerbidius Scævola[55]; who was greatly in the confidence of M. Aurelius[56]; and was not more remarkable for his own perſonal abilities, than for many eminent diſciples, who were educated in his ſchool; among whom was the Emperor Septimius Severus; together with Papinian,

Papinian.

a kinſman and intimate friend of that prince[57]; under whom, likewiſe, he enjoyed many honorable and lucrative preferments.

[51] Thus ſays the Emperor; "Jubemus "igitur vobis antiquorum prudentium, qui- "bus auctoritatem conſcribendarum inter- "pretandarumque legum ſacratiſſimi prin- "cipes præbuerunt, libros ad jus Romanum "pertinentes et legere, et elimare: ut ex "his omnis materia colligatur, nulla, ſe- "cundum quod poſſibile eſt, neque ſimili- "tudine, neque diſcordia derelicta: ſed ex "his hoc colligi, quod unum pro omnibus "ſufficiat." Præf. 1. ad D. 4.

[52] Maſc. ut ſup. 9.

[53] Proem. ad 1. § 6. Grav. O. J. 1. 83.

[54] Schult. Jur. Prud. Vet. ante Juſt.

[55] Grav. O. J. 1. 98. Maſc. ut ſup. 8. 5.

[56] "Uſus eſt Scævola præcipue, juriſpe- "rito." Jul. Cap. in M. Aur. 11.

[57] "Papinianum amiciſſimum fuiſſe Imp. "Severo, et, ut aliqui loquuntur, affinem "etiam per ſecundam uxorem, memoriæ "traditur:—eumque cum Severo profeſſum "ſub Scævola." Spart. in Car. 8.

Papinian having acquired an immenſe knowledge in his profeſſion[58], and being no leſs famous both for his judgment and integrity, his anſwers were eſteemed almoſt oracular: and his memory was holden in the higheſt veneration by all ſucceeding princes and legiſlators, who knew how to ſet a juſt value upon true merit. Thus the Emperors Theodoſius and Valentinian, in a Reſcript to the ſenate, in which they confirm the deciſions of many great lawyers of antiquity, direct, that "where the opinions of theſe eminent "profeſſors ſhould be found different, that of the majority ſhould "prevail; but when they were equal, that which was ſupported by "the authority of Papinian; who, as he may juſtly claim a pre-"ference before any ſingle one, ought to yield it to a number[59]." St. Jerome is likewiſe ſaid to allow him the ſame rank in the human law, as St. Paul bears in the divine[60].

Juſtinian, with a laudable ardor for the propagation of legal knowledge, had preſcribed a regular courſe of ſtudy for the uſe of young beginners; pointing out in what particular order the ſeveral books of the law were to be read. After two years employed in making themſelves maſters of the general elements and principles of the ſcience, the ſtudents, on their entrance upon their third year, were to be admitted to the peruſal of the choiceſt works of Papinian, with which their juridical labors were to end, and themſelves to be diſtinguiſhed by the honorable title of "Papinianiſtæ:" a kind of degree, taken with great ceremony, and celebrated with

[58] Spartian calls him "Juris aſylum et "doctrinæ legalis theſaurum." In Sev. 21.

[59] "Ubi diverſæ ſententiæ proferuntur, "potius numerus vincat auctorum: vel ſi "numerus æqualis ſit, ejus partis præcedat "auctoritas, in qua excellentis ingenii vir "Papinianus emineat; qui ut ſingulos vin-"cit, ita cedit duobus." Cod. Theod. 1. 4.

[60] Grav. O. J. 1. 99. Maſc. ut ſup. 8. 6. Hein. Hiſt. Jur. Civ. § 328—331.

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various feſtivities[61]; which, very poſſibly, gave the hint for the like practice, now in uſe in our modern univerſities[62].

Papinian preſided likewiſe as judge in this iſland, for ſeveral years, under Severus, who kept his court at York: from which circumſtance, we find ſeveral Reſcripts, ſent to that city by the ſame Emperor, for the government of his Britiſh dominions, which are ſtill extant in the body of the Civil Law. This fact will help to account for thoſe numerous remains of Roman laws and cuſtoms, which deſcended to ſucceeding times; and prevailed in ſeveral of our provinces, the more northern ones eſpecially, long before the ſuppoſed diſcovery and introduction of the civil law in the twelfth century: though, as their true origin was probably ſoon forgotten, and they were afterwards inſenſibly adopted by the Saxons into their legal ſyſtem, the merit of their invention is often imputed to thoſe illiterate conquerors.

Severus had ſo high an eſteem for this excellent and uncorrupt miniſter, that he appointed him guardian to his children: but, upon the demiſe of that prince, his profligate ſon Caracalla, unwilling to ſubmit to the reſtraint of ſo virtuous a monitor, ſoon diſmiſſed him from his ſervice[63]; and not long after, as it is ſaid, ordered him to be put to death, for refuſing to juſtify the murder of his brother Geta.

[61] Thus ſays the Emperor; "Ne autem "tertii anni auditores, quos Papinianiſtas vo- "cant, nomen et feſtivitatem ejus amittere "videantur, ipſe iterum in tertium annum "per belliſſimam machinationem introductus "eſt: librum enim hypothecariæ ex pri- "mordiis plenum ejuſdem maximi Papini- "ani fecimus lectione, ut et nomen ex eo "habeant, et Papinianiſtæ vocentur, et ejus "reminiſcentes, et lætificentur, et feſtum "diem, quem cum primum leges ejus acci- "piebant, celebrare ſolebant, peragant: et "maneat viri ſublimiſſimi præfectorii Papi- "niani, et per hoc in æternum memoria, "hocque termino tertii anni doctrina con- "cludatur." Præf. 1. ad D. Conſt. 2. § 4.

[62] It is not unlikely that the compilers of the ſtatutes of that univerſity, to which the author hath the honor to belong, had an immediate view to the preſent conſtitution of Juſtinian, in the form they have directed to be uſed, on the preſentation of a ſcholar to a degree in Civil Law; viz. "Ut admittatur "ad lectionem cujuſlibet libri Inſtitutionum "Imperialium," &c. and ſo of preſentations to degrees in other faculties.

[63] Τους δε δη οικειους τους μεν απηλλαξεν, ὡς και Παπινιανος ὁ επαρχος ην. Dio Caſſ. 77. 1.

This,

This, however, is very dubious, even in the opinion of Spartian, who relates it [64] with all its minute circumſtances; as Dio, a much better writer, who lived very near the time, mentions his being murdered by that prince's command, but without aſſigning any reaſon for it at all [65]. There is, likewiſe, a conſiderable difference of opinion concerning his age, at the time of his death; ſome authors making him no more than thirty-ſix [66]; though others, with greater probability, ſpeak of him as much farther advanced in years, and as having arrived to the full period uſually allotted to man [67].

The ſame age produced Domitius Ulpian, another ſhining example of juridical and political learning [68], by birth a Syro-Phœnician; who, during the reign of Septimius Severus, had been aſſeſſor to the Prætors, and, together with Paulus, to Papinian himſelf [69]. Being too virtuous, however, to be intruſted by a tyrant, he was diſmiſſed from his offices by Heliogabalus [70]; but reſtored to them by Alexander Severus, to whom he had been tutor, and who, from a juſt ſenſe of his abilities, always conſulted him in every queſtion of importance; directed himſelf by his counſels [71]; and, as

Ulpian.

[64] "Scio de Papiniani nece multos ita in "literas retuliſſe, ut cædis non ſciverint "cauſam, aliis alia referentibus: ſed ego "malui veritatem opinionum edere, quam "de tanti viri cæde reticere.—Egiſſe quin-"etiam (ſc. Papinianum) ne occideretur: "(ſc. Geta) atque ideo una cum iis qui "fautores fuerant Getæ, a militibus, non "ſolum permittente, verum etiam ſuadente "Antonino, occiſum." Æl. Spart. in Car. 8.

[65] Ἐκ δὲ τῶν ὑπάτων ἀνδρῶν ἄλλους τε (ἀπεκτεινε, ſc. Caracalla) καὶ τὸν Παπινιανὸν· καὶ τὴν γε τοῦ Παπινιανοῦ φονεύσαντι εἰπεῖν αὐτῷ, ὅτι ἀξίην αὐτὸν, καὶ οὐ ξίφει διεχρήσατο. Dio. Caſſ. 77. 4.

[66] Grav. O. J. 1. 99.

[67] Hein. Hiſt. Jur. Civ. § 331.

[68] Grav. O. J. 1. 100. Maſc. ut ſup. 8. 7. Hein. Hiſt. Jur. Civ. § 336—340.

[69] "Qui tamen ambo aſſeſſores Papiniani "fuiſſe dicuntur." Lampr. in Alex. Sev. 26.

[70] "Removit Ulpianum juriſconſultum, "ut bonum virum." Lamp. in Heliog. 16.

[71] "Neque unquam ſolum quemquam, "niſi præfectum ſuum, vidit, et quidem Ul-"pianum, ex aſſeſſore ſemper ſuo; cauſa "juſtititiæ ſingularis. Cum autem alterum "adhibuit, et Ulpianum rogari juſſit." Lamp. in Alex. Sev. 31. Nam et conſiliarius "Alexandri, et magiſter ſcrinii Ulpianus "fuiſſe perhibetur." Id. ib. 26. "Ulpia-"num pro tutore habuit, primum repug-"nante matre, deinde gratias agente:—— "atque ideo ſummus imperator fuit, quod "ejus conciliis præcipue rempublicam rexit." Id. ib. 51. "Cum inter ſuos convivaretur, "aut Ulpianum aut doctos homines adhi-"bebat,

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as the ſureſt token of reſpect and confidence, diſtinguiſhed him by the name of *parent*[71].

To his influence over that polite and amiable prince are owing, as is generally ſuppoſed, the many mild and moderate laws relating to the fiſcal rights of the Imperial crown; which, with many others on various ſubjects, are, to his great honor, ſtill preſerved in the Digeſt. He was a ſteady friend to the natural rights of mankind, and always ſolicitous that the ſeverity of the law ſhould be mitigated by equity: an implacable enemy to tyranny of every kind, particularly that of the Prætorian bands; for his ſteady oppoſition to which he at laſt fell a ſacrifice to their indignation, almoſt in the arms of the Emperor, and his mother; who had often before defended him from their fury, by oppoſing to it the imperial purple[73], hitherto held ſacred by the ſoldiery. But as he is ſaid to have cauſed two of their leaders to be put to death, that he might ſucceed them in their præfecture[74], they could no longer contain their reſentment.

The truth of this charge, however, againſt Ulpian is very juſtly doubted; not only as it was quite inconſiſtent with his general character; but, likewiſe, as he was already inveſted with an office of the ſame kind[75], and enjoyed all the other honors which an indulgent maſter could confer upon him. A ſimilar anſwer may be given to the accuſation, of his being an enemy to the Chriſtians, and having

" bebat, ut haberet fabulas literatas, quibus " ſe recreari dicebat et paſci." Id. ib. 34. Δομιλιῳ δε τινι Ουλπιανῳ τον τε των δορυφορων προστασιαν, και τα λοιπα της αρχης επιτρεψαι πραγματα. Dio Caſſ. 80. 1. " Aſſeſſorem habuit vel " ſcrinii magiſtrum Ulpianum, juris condi- " torem." Eutr. 8. 13.

[72] Thus, in a reſcript concerning the puniſhment of thoſe who had broken open granaries, he adds, " Quod ſi majorem animad- " verſionem exigere rem deprehenderit; ad " Domitium Ulpianum, præfectum prætorio, " et *parentem meum*, reos remittere curabit." C. 4. 65. 4.

[73] " Quem ſæpe a militum ira objectu " purpuræ ſummæ defendit." Lamp. in Alex. Sev. 51.

[74] Τον δε δη Φλαβιανον, τον τε Χρηστον αποκτειναι, ἱνα αυτους διαδεξηται, και αυλος ου πολλῳ ὑστερον ὑπο των δορυφορων, επιθυμιων δι νυκτος, κατισφαγη· καιτοι και προς το παλαιον αναδραμων, και προς αυλον τον αυτοκρατορα, την τε μητερα αυλου καταφυγων. Dio Caſſ. 80. 2.

[75] Sex. Aur. Vict. in Cæſ. 24.

been

been the cauſe that ſome ſevere edicts were publiſhed againſt them; the Emperor, and his mother Mammæa, being well known to be their profeſſed friends [76].

Ulpian left behind him a great variety of works, none of which have reached our time, except a few fragments, collected into one body, under the name of "Tituli ex Corpore Ulpiani;" and likewiſe ſeveral of his opinions and reſponſes, which are preſerved by Juſtinian in the Digeſt.

Julius Paulus.

Another eminent cotemporary of Ulpian was Julius Paulus, who had been joint aſſeſſor with him to Papinian [77]; and enjoyed an equal ſhare of honors and dignities from the ſame princes, under whom they both flouriſhed [78]. He differed from him, however, very widely in his principles; being a rigid Sabinian, and a ſtrict adherent to the mere letter of the law [79]. He was one of the moſt voluminous writers that appeared in the profeſſion of Roman juriſprudence: but moſt of his works are now loſt, except what are preſerved in the Digeſt; and likewiſe five books of choice and eſtabliſhed maxims, written for the uſe of his ſon, which are ſtill extant, under the title of "Libri Receptarum Sententiarum." Theſe were in ſo high eſteem, in earlier times, that the Emperors Theodoſius and Valentinian gave them a perpetual and general authority [80]. Modeſtinus, one of his cotemporaries, ranks him, together with Scævola and Paulus, among the chief ſages of the profeſſion [81].

[76] Vit. Ulp. a Jo. Bert. et Gul. Grot. in Schult. Jur. Prud. Vet. Ante-Juſt.

[77] "Paulum et Ulpianum in magno ho-" nore habuit, quos præfectos ab Helioga-" balo alii dicunt factos, alii ab ipſo." Lamp. in Alex. Sev. 26.—"Ut probant " Pauli et Ulpiani præfecturæ, qui Papinia-" no in conſilio fuerunt." Spart. in Peſc. Nigr. 7.

[78] Thus we find him taken notice of by Alexander Severus; "Adhuc Domitium " Ulpianum, quem Heliogabalus prætoria-" nis præfecerat, eodem honore retinens: " Pauloque inter exordia patriæ reddito, " juris auctoribus, quantus erga optimos, " atque æqui ſtudio eſſet, edocuit." Sex. Aur. Vict. in Cæſ. 24.

[79] Grav. O. J. 1. 101. Maſc. ut ſup. 8. 8. Hein. ut ſup. § 341—343. Schult. ut ſup.

[80] "Pauli quoque ſententias ſemper va-" lere præcipimus." Cod. Theod. 1. 4.

[81] "Ita enim et Cerbidius Scævola, et Ju-" lius Paulus, et Domitius Ulpianus, Cory-" phæi legum prudentum ſcribunt." D. 27. 1. 13. 2.

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Modeſtinus.

The laſt of theſe famous luminaries of the law was Herennius Modeſtinus, a diſciple of Ulpian: a very celebrated ſcholar and writer, and particularly eminent for his ſkill in the Greek language, in which ſome of his laws are ſtill extant in the Digeſt[82]. He was tutor to the younger Maximin[83]; and in high favor afterwards with the Emperor Gordian[84].

It was neceſſary to lay before the reader a ſhort view of theſe illuſtrious characters, eſpecially the five laſt; becauſe to their diligence we chiefly owe the preſervation of the opinions, and other precious remains of their predeceſſors in that honorable profeſſion, quite from the Auguſtan age, if not indeed much higher; as well as the many valuable additions wherewith they themſelves enriched the Roman conſtitution; and which were ſo highly approved by future princes, as to be received into the general body of laws, without any defalcation whatſoever[85]. Their works, which, as we have ſeen, were very numerous, underwent a ſtrict ſcrutiny by Juſtinian, and the compilers of the Digeſt; wherein, ſuch as were thought proper to be adopted into this new and authentic collection, ſtill appear under the names of their reſpective authors; as will be eaſily ſeen, by referring to the heads of the ſeveral laws, as they ſtand in that work.

[82] D. 27. 1.

[83] "Uſus eſt juriſperito Modeſtino." Jul. Cap. in Max. Jun. 1.

[84] Grav. O. J. 1. 102.

[85] Thus ſay the Emperors Theodoſius and Valentinian; "Papiniani, Pauli, Gaii, "Ulpiani, atque Modeſtini ſcripta univerſa "firmamus. Ita ut Caium atque Paulum, "Ulpianum, et cæteros comitetur auctoritas "lectionis, quorum tractatus atque ſententias "prædicti omnes ſuis operibus miſcuerunt, "ratam eſſe cenſemus, ut Scævolæ, Sabini, "Juliani, atque Marcelli, omniumque quos "illi celebrârunt: ſi tamen eorum libri, "propter antiquitatis incertum, codicum "collatione firmentur." Cod. Theod. 1. 4.

The remains of the works of theſe illuſtrious authors are preſerved in one volume, intitled "Juriſprudentia Vetus Ante "Juſtinianea," by Ant. Schultingius, Lug. Bat. 1717.

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A general View of the State of the Roman Government, from the Death of Alexander Severus, to the Close of the Third Period.

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THE perſonal accompliſhments of Alexander Severus; the prudent choice he made of his miniſters; and the wiſe principles of government which he adopted; had already, in the ſhort ſpace of thirteen years, re-eſtabliſhed the empire upon a ſolid and durable baſis; and ſeemed to promiſe a long continuance of its welfare and proſperity [1]. But the times were grown too corrupt, to admit of a general reformation; and the virtues of the prince, inſtead of becoming models of imitation, were too often the objects of jealouſy and obloquy. The ſenate and people, indeed, were well reconciled to his adminiſtration [2], and ſhewed a grateful ſenſe of the happineſs they enjoyed under his protection: but the ſoldiery, immerſed in every kind of ſenſuality and diſorder, could not behold with patience that purity of manners, which ſerved only as a rebuke to their own vices. Trembling at the revival of that diſcipline, which they foreſaw would ſoon put an effectual ſtop to their licentious practices, they anticipated the fatal blow to themſelves, by the murder of their royal maſter [3]. To aggravate the public loſs, and to add inſult A. D. 235. to treaſon, they inſtantly made choice of an illiterate and bloody bar-

[1] "Neque ultra annos tredecim imperio "functus rempublicam reliquit firmatam "undique. Quæ jam tum a Romulo ad "Septimium certatim evolans Baſſiani con-"ſiliis, tanquam in ſummo conſtitit. Quo "ne confeſtim laberetur Alexandri fuit." Sex. Aur. Vict. de Cæſ. 24.

[2] "Cum ingenti amore apud populum et "ſenatum vixit." Æl. Lamp. in Alex. Sev. 59.

[3] "Cum tantæ ſeveritatis vim milites in-"horreſcunt (unde etiam *Severi* cognomen-"tum acceſſerat), agentem caſu cum paucis "—trucidavere." Sex. Aur. Vict. de Cæſ. 24.

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barian, an utter ſtranger to the ſenate[4]; one who held it for an eſtabliſhed maxim, that power could only be ſupported by cruelty[5]; and whoſe fierce and ſavage diſpoſition[6] has deſervedly placed him in the firſt ranks, among the moſt infamous and abhorred tyrants of antiquity[7].

From the afore-cited paſſages, and from ſome others that will ſoon follow, it ſhould ſeem to have been the general opinion of thoſe times, that every election of an Emperor, by the ſole authority of the army, was an infringement of the prerogatives of the ſenate; and that it was a neceſſary qualification in the perſon elected, to be either a member of, or nearly related to, that body. There was not, indeed, any expreſs law to ſupport theſe pretenſions, neither was it likely there ſhould be any; becauſe the Imperial office was itſelf an uſurpation upon the rights of the republic. But the uſurpers being all perſons of the firſt families and conſequence in the ſtate, the ſenate, with whom they were intimately connected, gradually acquired an intereſt in their appointment, which very well ſupplied the want of a poſitive law. Therefore, upon every new acceſſion, though effected without the concurrence of the fathers in the firſt inſtance, their ſubſequent conſent was generally eſteemed eſſential to the completion of the act.

But the nomination of Maximin was made by the army, in open defiance of all former precedents; as if purpoſely deſigned to affront the ſenate, and degrade the majeſty of the empire. To add to this

[4] "Poſt hunc Maximinus ex corpore militari primus ad imperium acceſſit, ſola militum voluntate, cum nulla ſenatus interceſſiſſet auctoritas, neque ipſe ſenator eſſet." Eutr. 9. 1. "Primus e militaribus, literarum fere rudis, potentiam cepit ſuffragiis legionum." Sex. Aur. Vict. de Cæſ. 25. "Maximinus primus e corpore militari, et nondum ſenator, ſine decreto ſenatus, Auguſtus ab exercitu appellatus eſt." Jul. Cap. in Max. 8.

[5] "Erat ei perſuaſum, *niſi crudelitate imperium non teneri.*" Id. ib. 8.

[6] "Homo natura ferus, ſic exarſit, ut non hominem ſed belluam putares." Id. ib. 17.

[7] Tam crudelis fuit, ut illum alii *Cyclopem*, alii *Buſiridem*, nonnulli *Phalarim*, multi *Typhonem*, vel *Gygem* vocarent." Id. ib. 8.

indignity,

indignity, the fathers were obliged to confirm it, by their outward and formal approbation [8]; though they ſtood in ſuch dread of the cruelty of Maximin, that it was made a part both of their public and private ſupplications to their gods, in which they were likewiſe joined by the women and children, that he might never ſet his foot within the walls of Rome [9].

But this general conſternation ſoon ceaſed, upon the proclamation of the two Gordians, by the African legions; and on this joyful occaſion the conſul convoked the ſenate, which immediately obeyed the ſummons, and aſſembled with the prætors, ædiles, and tribunes of the people [10]: a circumſtance highly worthy of attention; as it ſhews, that the antient magiſtrates of the republic were not yet totally annihilated or ſwallowed up by the Imperial power; but that they ſtill continued to appear in their diſtinct characters, and incidentally to diſcharge the functions originally belonging to their ſeveral offices. This gave them an opportunity, likewiſe, of aſſerting their own ſupreme authority, independent of the army; which they exerciſed in the moſt explicit manner, by unanimouſly proclaiming the Maximins public enemies to their country; and by acknowledging the Gordians as the lawful Emperors [11].

The decree, by which theſe important effects were produced, is called by the hiſtorian, a *tacit act of the ſenate*; a mode of proceeding, "Senatuſconſultum Tacitum."

[8] "Quod tamen etiam patres, dum periculoſum exiſtimant inermes armato reſiſtere, approbaverunt." Sex. Aur. Vict. de Cæſ. 25.

[9] "Senatus eum tantum timuit, ut vota in templis publice privatimque, mulieres etiam cum ſuis liberis facerent, ne ille unquam urbem Romam videret." Jul. Cap. in Max. 8.

[10] The hiſtorian thinks this act of the ſenate of ſo much moment, as to call the particular attention of his readers to the conſideration of it: "Intereſt," ſays he, "ut ſenatuſconſultum, quo Gordiani imperatores appellati ſunt, et Maximinus hoſtis, literis propagetur. Non legitimo ſed indicto ſenatus die, *conſul* jam domi conventus, cum *prætoribus, ædilibus*, et *tribunis plebis*, venit in curiam." Jul. Cap. in Gord. 11.

[11] To take it in their own words, as preſerved by the hiſtorian: "*Maximinum hoſtem omnes judicamus. Maximinum cum filio diis inferis devovemus. Gordianos Auguſtos appellamus. Gordianos principes agnoſcimus. Imperatores de ſenatu Dii conſervent: imperatores nobiles victores videamus: imperatores noſtros Roma videat. Hoſtes publicos qui occiderit, præmium merebitur.* Id. ib.

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which, according to the author here referred to, originated from the ſpecial neceſſities of the public; either when ſome imminent danger was apprehended from a foreign enemy; or when it was thought expedient to form ſome particular ſchemes, which were no ſooner to be reſolved on, than executed. Therefore, to prevent diſcovery, all clerks, ſcribes, and other official ſervants, were excluded, and the whole buſineſs was tranſacted by the ſenators themſelves, as in the preſent caſe, that their reſolutions might not reach the ears of Maximin [m].

From the difficult and perilous ſituations, to which Rome was ſo often reduced, there can be no doubt that theſe *tacit acts* were very frequent: and yet there are no certain traces of them to be found in earlier times, under that title, among the antient Roman writers; the want of which induced our author to give the foregoing conciſe, but ſatisfactory, explanation of their nature. It is very poſſible, likewiſe, that, as no further notice is taken of them in the ſubſequent reigns, this was the laſt effort of its kind, ever made by the ſenate to aſſert its own independency: for upon the acceſſion of Diocletian, which followed in leſs than half a century, the dignity and conſequence of that body was ſo effectually humbled, that little more remained of it, than a mere formal exiſtence. The practice itſelf, however, being of very material uſe, was ſtill continued, but was only transferred to other hands: for in the time of Conſtantine, to whom the ſame author dedicates his hiſtory, a kind of *privy council* appears to have been eſtabliſhed, the members of which were bound by

[m] "Dicit Junius Cordus illud *ſenatuſconſultum* fuiſſe *Tacitum*: quod quale ſit, aut quare ſic appellatum, brevi exponam.—— Hunc autem morem apud veteres neceſſitates publicæ repererunt; ut ſi forte aliqua vis ab hoſtibus immineret, quæ vel cogeret humilia captare conſilia, vel aliqua conſtituere, quæ non prius oporteret dici quam effici, vel ſi nollent ad amicos aliqua permanere, ſenatuſconſultum tacitum fieret: ita ut non ſcribæ, non ſervi publici, non cenſuales, illis actibus intereſſent, ſenatores exciperent, ſenatores omnium officia cenſualium ſcribarumque complerent, ne quid forte proderetur. Factum eſt ergo ſenatuſconſultum tacitum, ne res ad Maximinum perveniret." Jul. Cap. in Gord. 12.

ſolemn

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ſolemn oath to affect a profound ignorance of all ſecret reſolutions of ſtate, till after their completion [13].

The councils of modern princes and ſtates, in theſe more refined ages, are probably formed upon ſimilar models, though there is little occaſion to refer them to any particular archetype; as they have a natural relation to the neceſſities of every regular government, and are founded in the firſt principles of civil policy. It is true, indeed, that an arbitrary ſovereign, buried in the occult retreats of a cabinet, and ſurrounded by his venal and ſervile tools of office, may form plans of tyranny, of the moſt fatal tendency to the happineſs of his ſubjects. But the genuine merits of political inſtitutions are not to be eſtimated by their poſſible abuſes. Secrecy, in a certain degree, is neceſſary under the moſt gentle and liberal form of government; as without it the beſt concerted ſchemes of national defence and ſecurity would be anticipated, by the ſubtle artifices of a vigilant and ſagacious enemy. In ſuch a caſe, therefore, it becomes a ſacred and inviolable duty to the public: and thoſe precipitate and officious politicians, who, for the ſake of indulging a vain and impertinent curioſity, or, what is ſtill worſe, from wild and ill-conceived notions of the privileges of a free people, imagine they have a right to partake of the private councils of the ruling power, are only contending for a liberty to betray their own intereſts, and to diſappoint every meaſure, how wiſely ſoever contrived, for the welfare of their country.

From the cloſe of the reign of Alexander Severus, the ſymptoms of decay became every day more rapid and manifeſt in this mighty empire: for though its conſtitution had been long unſound and defective, it had hitherto been cheriſhed and kept in tolerable vigor, by the princes of the preceding century; the majority of whom diſcharged the duties of that exalted ſtation, with an attention and

[13] "Omnino exemplum *ſenatuſconſulti Taciti* non aliud eſt hodie, quam quod veſtra clementia, convocatis ad interiora majoribus, ea diſponit, quæ non ſunt omnibus publicanda: de quibus adjurare etiam ſoletis, ne quis ante rem completam, quidquam vel audiat vel intelligat." Jul. Cap. in Gord. 12.

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vigilance, that equally beſpake the affection of the parent, and the integrity of the magiſtrate. But the diſtractions of the ſucceeding times defeated all the good effects of the moſt liberal ſyſtems of civil policy. Emperors, indeed, were choſen as heretofore; but they were the mere creatures of tumult and faction; ſuddenly nominated, without regard to birth, rank, or country, either by the ſenate or ſoldiery, as each could ſnatch the fleeting opportunity; and, feeling the tenderneſs of the ground on which they ſtood, were too intent upon ſecuring their own power, to beſtow a thought upon the general glory and proſperity of the empire[14]. It muſt be confeſſed, however, that ſome few worthy exceptions are yet to be found in the midſt of this diſguſting catalogue of tyrants; but the ſhortneſs of their reigns, and the total want of public virtue, prevented them from bringing their ſalutary deſigns to maturity.

An antient hiſtorian has recorded a ſomewhat ludicrous, though too juſt, obſervation of a jeſter in the court of Claudius the Second, that *Good princes were ſo very rare, that all who deſerved that name might be drawn in the compaſs of a ſingle ring.* For this he aſſigns a variety of very ſenſible and appoſite cauſes, which well deſerve to be remembered; not only as they deſcribe the true character of thoſe times; but as they may ſerve likewiſe for uſeful warnings, to point out thoſe rocks and precipices, which both princes and people, in all ages and countries, are equally concerned to avoid. Among theſe were enumerated, an univerſal profligacy of manners, ariſing from immoderate wealth and abundance; a train of falſe friends, treacherous guards, inſatiable eunuchs, weak and contemptible courtiers, and a total unacquaintance with public buſineſs. Add to theſe, a ſelf-intereſted combination of crafty miniſters, plotting to deceive

[14] "Abhinc dum dominandi ſuis, quam "ſubigendi externos, cupientiores ſunt, at- "que inter ſe armantur, magis Romanum "ſtatum quaſi abrupto præcipitavere, im- "miſſique in imperium promiſcue boni mali- "que, nobiles atque ignobiles, ac barbari "multi." Sex. Aur. Vict. de Cæſ. 24. And again, "Eo prolapſi mores ſunt, uti ſuo, "quam reipublicæ, magiſque potentiæ, quam "gloriæ ſtudio plures agant." Id. ib. 33.

their

their prince, and to dictate what he ſhall confirm by his approbation: a prince, who being immured in his palace, knows nothing of the ſtate of public affairs, and is obliged to receive that for truth, which is told him by others; who appoints for judges ſuch as are unworthy of that office; and removes from the adminiſtration thoſe whom he ought to employ: from all which the author very juſtly concludes, that nothing is more difficult to be found, than a good prince [15].

The ignominious captivity of Valerian, and the profligate indolence of Gallienus, brought an indelible diſgrace upon the Roman arms, and were equally fatal to the civil government [16]. The utter want of ſpirit and activity, in the executive power at home, encouraged the ambitious hopes of pretenders in the more diſtant regions; and tempted them to ſet up almoſt as many diſtinct ſovereignties, as provinces [17]. Many of theſe, indeed, ſoon expired, through their own weakneſs; but others ſurvived, and acquired ſtrength enough, to ſet the braveſt princes and commanders at defiance; and, finally, ſo divided the intereſt of this vaſt and ill-connected empire, and gave

[15] "Vides, quæſo, quam pauci ſint principes boni, ut bene dictum ſit a quodam mimico ſcurra Claudii, hujus temporibus, *in uno annulo bonos principes poſſe perſcribi atque depingi*. At contra, quæ ſeries malorum? Ut enim omittamus Vitellios, Caligulas, et Nerones; quis ferat Maximinos et Philippos, atque illam inconditæ multitudinis fæcem? Tametſi Decios excerpere debeam, quorum et vita et mors veteribus comparanda eſt. Et quæritur quidem quæ res malos principes faciat? Jam primum nimia licentia, deinde rerum copia; amici præterea improbi, ſatellites deteſtandi, eunuchi avariſſimi, aulici vel ſtulti vel deteſtabiles, et (quod negari non poteſt) rerum publicarum ignorantia.—Colligunt ſe quatuor vel quinque, atque unum conſilium ad decipiendum imperatorem capiunt: dicunt quod probandum ſit. Imperator, qui domi clauſus eſt, vera non novit: cogitur hoc tantum ſcire, quod illi loquuntur: facit judices quos fieri non oportet; amovet a republica quod debeat obtinere. Quid multa? ut Diocletianus ipſe dicebat, *Bonus, cautus, optimus venditur imperator*. Hæc Diocletiani verba ſunt, quæ idcirco inſerui, ut prudentia tua ſciret, nihil eſſe difficilius bono principe." Fl. Vop. in Aur. 42 & 43.

[16] "Horum (ſc. Valeriani et Gallieni) imperium Romano nomini pernicioſum, et pene exitiabile fuit, vel infelicitate principum, vel ignavia." Eutr. 9. 6.

[17] Thus ſays the hiſtorian of Gallienus; "Hæc vita Gallieni fuit, breviter a me literis intimata, qui natus abdomini et voluptatibus, dies ac noctes vino et ſtupris perdidit. Orbem terrarum triginta prope tyrannis vaſtari fecit, Romanum dehoneſtantes imperium, ita ut etiam mulieres eo melius imperarent." Treb. Poll. in Gall. 16.

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it ſo ſevere a ſhock, that, with all its efforts, it could never recover its priſtine grandeur and ſtability.

The ſenate, all this while, preſerved its antient oſtenſible majeſty, and ſuperiority over the whole; though its actual influence in the ſtate depended much more upon the diſpoſition of the Emperors, and the forbearance of the army, than upon its own internal vigor. Thus Gallienus, conſcious that his own ſloth and effeminacy had expoſed him to the contempt of the world; and fearful, leſt the Imperial power ſhould therefore be transferred into the hands of the principal nobility; forbade all the ſenators from entering into any military employments, and from having any connexions with the army [18].

A. D. 268. The acceſſion of Claudius, amidſt the univerſal acclamations of every order of men, inſpired new life into the drooping empire [19]; and gave hopes of a reign, the moſt propitious to the conſtitution, of any that had been known, ſince the commencement of the Imperial government. All the writers of the times ſpeak of his character, in the higheſt terms of eſteem and reverence; as having united in his own perſon the heroiſm of Trajan, the humanity of Antonine, and the moderation of Auguſtus, in ſo eaſy and natural a manner, as not to appear the mere copies of the virtues of his predeceſſors; but as valuable originals, worthy of their future imitation, had thoſe princes not exiſted before him [20]. But, however this

[18] "Patres quidem, præter commune Romani malum orbis, ſtimulabat proprii ordinis contumelia: quia primus ipſe, metu ſocordiæ ſuæ, ne imperium ad optimos nobilium transferretur, ſenatum militia vetuit; etiam adire exercitum." Sex. Aur. Vict. de Cæſ. 33.

[19] "Claudii imperium milites, quos fere contra ingenium, perditæ res ſubigunt recta conſulere, ubi afflicta omnia perſpexere, avide approbant extolluntque, viri laborum patientis, æquique ac prorſus dediti reipublicæ." Sex. Aur. Vict. de Cæſ. 34. "Militibus ſedatis, Claudius, vir ſanctus ac jure venerabilis, et bonis omnibus carus, amicus legibus, acceptus ſenatui, populo bene cognitus, accepit imperium." Treb. Poll. in Gall. 15.

[20] Thus ſays the hiſtorian in a kind of rapture: "Quid in illo non mirabile, quid non conſpicuum?

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this may be, thus far is certain, that in the ſpace of two years, he not only repelled a moſt formidable invaſion of the aſſociated nations of the North, but he improved the political ſyſtem with the addition of many excellent laws[21]; ſo that had his reign been protracted to the utmoſt length of time uſually aſſigned to human nature, it is not too extravagant a compliment to his memory to ſay, that it would have appeared ſhort in the eyes of a happy and grateful people[22].

The ſtern and haughty temper of Aurelian[23] was very unfavorable to the ſenatorial intereſts. He treated the members of that body with the moſt unwarrantable cruelty, and put them to death upon the ſlighteſt accuſations[24]; ſo as to acquire the invidious title of *Pedagogue of the Senate*[25]. Full of thoſe ideas of abſolute power, which a military courſe of life is too apt to ſuggeſt, he ventured to put on a diadem, together with other external ornaments A. D. 270.

" conſpicuum? Quid non triumphalibus ve-
" tuſtiſſimis præferendum? In quo Trajani
" virtus, Antonini pietas, Auguſti modera-
" tio, et magnorum principum bona ſic fue-
" runt, ut non ab aliis exemplum caperet,
" ſed, etiamſi illi non fuiſſent, hic cæteris
" reliquiſſet exemplum." Treb. Poll. in Claud. 2. And he thus concludes the hiſtory; " Longum eſt tam multa, quam me-
" ruit vir ille, perſcribere: unum tamen
" tacere non debeo, quod illum et ſenatus
" et populus, ante imperium, et in imperio,
" et poſt imperium, ſix dilexit, ut ſatis con-
" ſtet, neque Trajanum, neque Antoninos,
" neque quemquam alium principem, ſic
" amatum." Id. ib. 18.

[21] Leges optimas dedit." Id. ib. 2. " Par-
" cus vir ac modeſtus, et juſti tenax, et rei-
" publicæ gerendæ idoneus." Eutr. 9. 8.

[22] " Breve illius in imperio fuit tempus;
" ſed breve fuiſſet, etiamſi quantum hominum
" vita ſuppetit, tantum vir talis imperare
" potuiſſet." Treb. Poll. in Claud. 2.

[23] " Fuit ſævus et ſanguinarius, et trux
" omni tempore." Sex. Aur. Vict. ep. 35.
" Vir in bello potens, animi tamen immo-
" dici, et ad crudelitatem propenſioris.——
" Sævus et ſanguinarius, ac neceſſarius ma-
" gis in quibuſdam, quam in ullo amabilis
" imperator." Eutr. 9. 9. " Aurelianus,
" quod negari non poteſt, ſeverus, trucu-
" lentus, ſanguinarius fuit princeps." Fl. Vop. in Aur. 36.

[24] " Interfecti ſunt nonnulli etiam nobiles
" ſenatores, cum his leve quiddam, et quod
" contemni a minore principe potuiſſet, vel
" unus, vel levis, vel vilis teſtis objiceret." Fl. Vop. in Aur. 21. " Dicitur præterea
" hujus fuiſſe crudelitatis, ut pleriſque ſena-
" toribus ſimulatam ingereret factionem con-
" jurationis ac tyrannidis, quo facilius eos
" poſſet occidere." Id. ib. 39.

[25] " Populus Romanus vulgo dicebat,
" *Aurelianum pædagogum eſſe ſenatus.*" Id. ib. 37.

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of the regal character, hitherto unknown in Rome [26]; an attempt, from which even the pride of Caligula was obliged to desist; conscious that he should give less offence to his subjects, by calling himself a God, than a King [27].

But with all this, the reign of Aurelian was both glorious and beneficial to the empire; as he recovered many of its antient possessions [28]; restored military discipline; put some check upon the dissolute manners of the times; fortified the city of Rome [29]; and improved its constitution with several wise laws [30]. Qualities of this striking and heroical nature easily secured him the general love of the people, though he was dreaded by the senate [31]. But his inflexible severity drew upon him a violent and untimely death [32]; and upon the whole, in point of reputation, he holds no more than a middle rank among the princes of antiquity [33].

It should seem, however, from the singular consequences of the unexpected demise of Aurelian, that the personal characters of princes derive as large a share of their lustre from the circumstances of the times, as from their own intrinsic merit. Though destitute of those amiable and valuable accomplishments, which deserve the name of real virtues, and which could have rendered him an object of esteem, in the

[25] "Iste primus apud Romanus *diadema* "capiti innexuit: gemmisque, et aurata omni veste, quod adhuc fere incognitum Romanis moribus videbatur, usus est." Sex. Aur. Vict. ep. 35.

[27] V. p. 256.

[28] "Romanum ditiorem ad fines pristinos, "varia bellorum felicitate revocavit." Eutr. 9. 9.

[29] "Disciplinæ militaris, et morum dissolutorum magna ex parte corrector. Urbem Romanam muris firmioribus cinxit." Id. ib. "Muris urbem quam validissimis "laxiore ambitu circumsepsit." Sex. Aur. Vict. de Cæs. 35.

[30] "Leges plurimas sanxit, et quidem salutares." Fl. Vop. in Aur. 35.

[31] "Populus Romanus eum amavit, senatus timuit." Id. ib. 50.

[32] "Occiditur servi sui fraude, qui ad quosdam militares viros, amicos ipsius, nomina "pertulit annotata, falso manum ejus imitatus, tanquam Aurelianus ipsos pararet "occidere." Eutr. 9. 9.

[33] "Aurelianum quidem multi neque inter bonos, neque inter malos principes "ponunt, idcirco quod ei clementia, imperatorum dos prima, defuerit." Fl. Vop. in Aur. 44.

peaceful

peaceful walks of domeſtic and ſocial life; and, though the terror of the moſt reſpectable orders of his ſubjects, yet, ſo difficult was it thought to ſupply his place with another of equal worth and expectations, that the imperial ſceptre continued in a kind of abeyance for an interval of more than ſix months; while the ſenate and army were complimenting each other with the right of nomination [14].

A cotemporary hiſtorian has very ſenſibly remarked, as a matter worthy of the higheſt admiration and applauſe, that, during the long ſuſpenſe occaſioned by this important event, univerſal harmony prevailed through every order of the community, undiſturbed by the rude pretenſions of any ſelf-created tyrant: that the whole Roman world continued in a ſtate of profound tranquillity, under the joint protection of the ſenate, the army, and the people: neither did they require to be kept within the line of their duty, by any particular exertions of princely, or tribunitian power; but each conſtituent part, as it ought in every well-regulated government, ſtood in proper awe of each other.—A new and aſtoniſhing inſtance of moderation, the memory of which ought to be preſerved to the lateſt poſterity;

[14] "Quam difficile ſit imperatorem in locum boni principis legere, et ſenatus ſanctioris gravitas probat, et exercitus prudentis auctoritas. Occiſo namque ſeveriſſimo principe, de imperatore deligendo exercitus retulit ad ſenatum, idcirco quod nullum de his faciendum putabat, qui tam bonum principem occiderant. Verum ſenatus hanc eandem delectionem in exercitum refudit, ſciens, non libenter jam milites accipere imperatores eos, quos ſenatus elegerit. Denique id tertio factum eſt: ita ut per ſex menſes imperatorem Romanus orbis non habuerit." Fl. Vop. in Aur. 40. "Interea milites, omiſſo principe, legatos ſtatim Romam deſtinant, uti ſuopte arbitratu patres imperatorem deligerent. Quibus hoc ipſorum potiſſimum convenire munus reſpondentibus; rurſum legiones ad eos rejiciunt. Ita utrimque pudore ac modeſtia decertabatur, rara in hominibus virtute, rebus præſertim hujuſmodi, ac prope ignota militibus." Sex. Aur. Vict. de Cæſ. 35. "Quod poſt exceſſum Romuli, novello adhuc Romanæ urbis imperio, factum, Pontifices, penes quos ſcribendæ hiſtoriæ poteſtas fuit, in literas retulerunt; ut interregnum, dum poſt bonum principem bonus alius quæritur, iniretur; hoc poſt Aurelianum, habito inter ſenatum exercitumque Romanum non invido, non triſti, ſed grato religioſoque certamine, ſex totis menſibus factum eſt." Fl. Vop. in Tac. 1.

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that they, who are eager in purſuit after royalty, may learn not to uſurp, but to deſerve it [35].

The preſent "Interregnum" afforded the ſeveral conſtituent powers a favorable opportunity of new-modelling the whole government, and of reducing it to whatever form they pleaſed. The two chief parties, which, for ſo many paſt ages, had lived in a determined ſtate of oppoſition to each other, had ſuſpended their inveterate prejudices and animoſities, contending only which ſhould moſt promote the common intereſt; neither do the people ſeem to have been entirely excluded from a ſhare in the public adminiſtration. Nothing, therefore, could even have hindered the reſtoration of the antient commonwealth, but the neceſſities of the times, which required an Emperor to command their armies [36]; who, being once choſen, would not eaſily be denied the other prerogatives, which cuſtom had ſo long annexed to the imperial office.

Tacitus, A. D. 275.

This polite and friendly competition ended with the election of Tacitus, a virtuous and venerable patrician; which was readily confirmed by the unanimous concurrence of the army. Though his advanced years ſomewhat leſſened the value of ſo wiſe a choice; yet the fathers, in making it, were guided by a juſt ſenſe of the prudence and mildneſs of his diſpoſition [37]; and by a full confi-

[35] "Ergo, quod rarum et difficile fuit, "ſenatus populuſque Romanus perpeſſus "eſt, ut imperatorem per ſex menſes, dum "bonus quæritur, reſpublica non haberet. "Quæ illa concordia militum? Quanta po- "pulo quies? Quam gravis ſenatus auctori- "tas fuerit? Nullus uſquam tyrannus emer- "ſit: ſub judicio *ſenatus et militum populique* "*Romani* totus orbis eſt temperatus: non illi "principem quenquam, ut recte facerent, non "tribunitiam poteſtatem formidabant: ſed "(quod eſt in vita optimum) ſe timebant. "Dicenda eſt tamen cauſa tam felicium mo- "rarum, et ſpeciatim monumentis publicis "inſerenda ea in poſteros humani generis "ſtupenda moderatio: ut diſcant qui regna "cupiunt, non raptum ire imperia, ſed me- "reri." Fl. Vop. in Tac. 2.

[36] Theſe were the declared ſentiments of the Conſul Gordianus, when he had convoked the ſenate for the purpoſe of an election: "*Imperator eſt deligendus: exercitus* "*ſine principe recte diutius ſtare non poteſt, ſi-* "*mul quia cogit neceſſitas.*" Fl. Vop. in Tac. 3.

[37] "Tacitus poſt hunc ſuſcepit imperium, "vir egregie moratus, et reipublicæ gerendæ "idoneus." Eutr. 9. 10.

dence

dence in his abilities to ſupport the dignity of his office. Being, likewiſe, well acquainted with his ſentiments concerning the qualifications of that prince by whom he wiſhed himſelf to be governed, they juſtly concluded, that he would do his utmoſt to realize the character, which he had moſt diſtinguiſhed by his public approbation [38].

Theſe well-grounded hopes he fully confirmed, by a ſolemn declaration to the Fathers, that he would govern them in ſuch a manner, as to convince them that he was ſenſible from whom he derived his authority; and would make their advice the fundamental principle of his conduct; requeſting them, likewiſe, to give ſuch orders, as ſhould be worthy of themſelves, of a modeſt-tempered army, and of the Roman people [39]. The equity of his laws [40]; the generoſity of his behaviour [41], the ſimplicity of his appearance [42], and his care to prevent ſeditions [43], were inconteſtable proofs of the ſincerity of his heart. And, perhaps, it will be thought not leſs to his honor, that he ordered the works of Cornelius Tacitus, whom he numbered among his anceſtors, to be placed in all public libraries, and ten freſh copies to be made of them every year; that the liberal and manly principles of

38 Such was the panegyric paſſed upon him by another member of the ſame body; "*Senioram principem fecimus, et virum qui omnibus quaſi pater conſulat. Nihil ab hoc immaturum, nihil properum, nihil aſperum formidandum eſt. Omnia ſeria, cuncta gravia, et quaſi ipſa reſpublica jubeat, auguranda ſunt. Scit enim qualem ſibi principem ſemper optaverit: nec poteſt aliud nobis exhibere, quam ipſe deſideravit et voluit.*" Fl. Vop. in Tac. 6.

39 "*Ita mihi liceat, Patres conſcripti, ſic imperium regere, ut a vobis me conſtet electum, ut ego cuncta ex veſtra facere ſententia et poteſtate decrevi. Veſtrum eſt igitur ea jubere atque ſancire, quæ digna vobis, digna modeſto exercitu, digna populo Romano eſſe videantur.*" Id. ib. 9.

40 "Cavit, ut ſervi in dominorum capita non interrogarentur, ne in cauſa majeſtatis quidem." Id. ib.

41 "Patrimonium ſuum publicavit, quod habuit in reditibus, ſeſtertium bis millies octingenties." Id. ib. 10.

42 "Togis et tunicis iiſdem eſt uſus quibus privatus." Id. ib.

43 "Thermas omnes ante lucernam claudi juſſit; ne quid per noctem ſeditionis oriretur." Id. ib.

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that diſcerning and patriotic hiſtorian might be perpetuated to all future generations [44].

The ſenate reflected, with exceſſive joy, upon their recovery of a right of election; they decreed public thankſgivings and ſacrifices; and announced to all their diſtant provinces, and confederate nations, that they were now become the ſovereign power: that all laws were to originate with them; that all foreign princes were to prefer their petitions to them; and that all queſtions of war and peace were to be regulated by their will and pleaſure [45]. But theſe rapturous hopes were ſoon diſappointed by the premature death of this worthy prince; who either fell a ſacrifice to ſome military conſpiracy, or paid the debt to nature in the ordinary way: though it is generally agreed, that his mind was affected with the deepeſt concern, at the prevalence of thoſe factions [46], which neither his example nor authority could ſuppreſs. His brother Florianus immediately took poſſeſſion of the empire, as if it had been hereditary; though he well knew that Tacitus had taken a ſolemn oath, in preſence of the ſenate, that he would not appoint even his own children for his ſucceſſors, but would prefer ſome perſon of exemplary

[44] "Corn. Tacitum, ſcriptorem hiſtoriæ "Auguſtæ, quod parentem ſuum eundem "diceret, in omnibus bibliothecis collocari "juſſit: et ne lectorum incuria deperiret, "librum per annos ſingulos decies ſcribi "publicitus in evicis archiis juſſit, et in bib-"liotheca poni." Fl. Vop. in Tac. 10.

[45] "Nec tacendum eſt et frequenter imi-"tandum, tantam ſenatus lætitiam fuiſſe, "quod eligendi principis cura ad ordinem "ampliſſimum revertiſſet, ut et ſupplica-"tiones decernerentur, et hecatombe pro-"mitteretur a ſingulis: denique ſenatores "ad ſuos ſcriberent, nec ad ſuos tantum, "ſed etiam ad externos: mitterentur præ-"terea literæ ad provincias, ut ſcirent omnes "ſocii omneſque nationes, in antiquum ſta-"tum rediiſſe rempublicam ac ſenatum prin-"cipes legere; imo ipſum ſenatum princi-"pem factum: leges a ſenatu petendas; "reges barbaros ſenatui ſupplicaturos; pa-"cem ac bella ſenatu auctore tractanda." Id. ib. 12.

[46] "Nihil tamen clarum potuit oſtendere, "inter ſextum menſem imperii morte præ-"ventus." Eutr. 9. 10. "Geſſit autem, "propter brevitatem temporum, nihil "magnum. Interemptus eſt enim inſidiis "militaribus, ut alii dicunt, ſexto menſe: "ut alii, morbo interiit. Tamen conſtat, "factionibus eum oppreſſum, mente atque "animo defeciſſe." Id. ib. 13.

merit:

merit[47]: from whence we learn, that ſome right to nominate a ſucceſſor was likewiſe acknowledged in the Emperor himſelf.

But this weak and injudicious uſurpation was ſoon extinguiſhed by a ſpirited effort of the army, who, with the concurrence of the ſenate and people, immediately proclaimed Probus[48]; a prince ſo happily formed by nature, as to poſſeſs within himſelf all the virtues, which had been the ſeparate ornaments of his worthieſt predeceſſors[49]. In return for the many high compliments paid him by the Fathers, he indulged them with various privileges; allowing them the power of determining caſes of appeal from the ſuperior judges; of creating proconſuls; of appointing lieutenants to the conſuls; of conferring prætorian power upon the governors of provinces; and of confirming by their own decrees whatever laws he ſhould propoſe to them[50].

The Roman ſtate having, from the time of its foundation, experienced every extreme, both of happineſs and miſery, that could well fall to the lot of mortality, began, once more, to entertain reaſonable hopes of a long continuance of glory and proſperity. Theſe flattering expectations were encouraged by feeling a revival of her

[47] "Hic frater Taciti germanus fuit, qui "poſt fratrem arripuit imperium, non ſenatus auctoritate, ſed ſuo motu, quaſi hæreditarium eſſet imperium: cum ſciret adjuratum eſſe in ſenatu Tacitum, ut cum "mori cepiſſet, non liberos ſuos, ſed optimum aliquem principem faceret." Fl. Vop. in Flor. 1.

[48] "Denique vix duobus menſibus imperium tenuit (ſc. Florianus), et occiſus eſt "Tarſi a militibus, qui Probum audierant "imperare, quem omnis exercitus legerat. "Tantus autem Probus fuit in re militari, "ut illum ſenatus optaret, miles eligeret, "ipſe populus Romanus acclamationibus "peteret." Id. ib.

[49] "Vir domi foriſque conſpicuus; vir "Aureliano, Trajano, Adriano, Antonino, "Alexandro, Claudioque præferendus: niſi "quia in illis varia, in hoc omnia præcipua "tunc fuere: qui poſt Tacitum, omnium "judicio bonorum, imperator eſt factus, orbemque terrarum pacatiſſimum gubernavit;—de quo dictum eſt, ut *Probus* diceretur, etiamſi *Probus* nomine non fuiſſet." Id. ib. 3.

[50] "Permiſit patribus, ut ex magnorum "judicum appellationibus ipſi cognoſcerent, "proconſules crearent, legatos conſulibus "darent, jus prætorium præſidibus darent, "leges quas Probus ederet ſenatuſconſultis "propriis conſecrarent." Id. in Prob. 13.

former

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former ſtrength, under the violent but ſucceſsful exertions of Aurelian; and by a well-grounded reliance upon the wiſdom and vigilance of Probus, who profeſſed to regulate every meaſure of his government, by the united ſenſe of the ſenate and people [51].

But it was the common misfortune of this unſteady and unprincipled conſtitution, that the virtues of princes were as much the objects of jealouſy, as their vices were of deteſtation; and both equally expoſed them to the ſame untimely fate. If their adminiſtration was really tyrannical, it ſeldom failed to draw upon them the juſt reſentment of their oppreſſed ſubjects; if wiſe and equitable, it alarmed the ſuſpicions of the lawleſs and profligate, who were fearful of reformation, and dreaded the exertion of a power, that was intended to correct their vices and irregularities.

Such was the cauſe which ſuddenly defeated the viſionary hopes of a diſtempered ſtate, now haſtening towards a diſſolution. The great and excellent prince, in whom theſe hopes were centered, having waged innumerable wars, with uniform valour and good fortune, boaſted, *that he ſhould render the army unneceſſary to the ſtate*: by which, according to the opinion of the hiſtorian, he meant no more, than, that having ſubdued every foreign nation from whence any danger was to be apprehended, and having reſtored univerſal peace to the empire, his ſubjects would have no other employment, than to cultivate the arts of humanity and ſocial life; and the whole world would become one great republic, under the government of the Roman laws, and Ro-

51 "Ducta (ſc. Reſpublica) per tempora, "variis vel erecta moribus, vel afflicta, nunc "tempeſtate aliqua, nunc felicitate variata, "omnia prope paſſa eſſet, quæ patitur in "homine uno mortalitas, videbatur poſt di- "verſitatem malorum jam ſecura, continuata felicitate manſura, poſt Aurelianum vehementem principem, Probo ex ſententia "ſenatus et populi leges et gubernacula temperante." Id. in Caro. 1.

man

man magiſtrates [52].—Romantic and impracticable ideas, it muſt be confeſſed; though certain indications of an heroic mind, and a virtuous heart. But the ſoldiery put a very different conſtruction upon theſe expreſſions. They conſidered them as levelled directly at themſelves: and therefore took care to cut him off in the career of his victories [53]; not wiſhing for the return of thoſe golden days, which were to commence in the ruin of their own conſequence.

This deſperate blow deeply affected all good men, and made them tremble at the thoughts of a ſucceſſor; in whom they too juſtly dreaded to find the vices of the worſt of their former tyrants: it being a truth not eaſily to be controverted, that much more is to be feared, than hoped for, from the dubious and unexplored characters of princes [54].

The military power from henceforward grew entirely predominant, and the ſenators for ever loſt their right of electing an Emperor; but whether from their own indolence, or from fear of creating ſeditions, is quite uncertain. They do not appear to have taken any pains to break through the contumelious edict of Gallienus,

[52] "Qua cauſa receptis omnibus pacatiſque dixiſſe proditur: *brevi milites fruſtra fore.*" Sex. Aur. Vict. de Cæſ. 37. "Hic cum bella innumera geſſiſſet, pace parta, dixit, *brevi milites neceſſarios non futuros.*" Eutr. 9. 11. "His addidit dictum eis grave, *ſi unquam eveniat ſalutare reipublicæ, brevi milites neceſſarios non futuros:*" of which declaration another hiſtorian gives the following explanation; "Quid ille conceperat animo, qui hoc dicebat? Nonne omnes barbaras nationes ſubjecerat pedibus? Quia totum mundum fecerat jam Romanum. *Brevi, inquit, milites neceſſarios non habebimus.* Quid eſt aliud dicere? Romanus jam miles erit nullus, ubique regnabit; omnia poſſidebimus, ſecura reſpublica, orbis terrarum non arma fabricabit, non annonam præbebit: boves habebuntur aratro, equus naſcetur ad pacem, nulla erunt bella, nulla captivitas: ubique pax, ubique Romanæ leges, ubique judices noſtri." Fl. Vop. in Prob. 20 & 23.

[53] "Hinc denique magis irritati, paulo cis ſextum annum apud Sirmium trucidavere." Sex. Aur. Vict. de Cæſ. 37.

[54] "Sed ruina ingens, vel naufragii modo, vel incendii, accenſis fataliter militibus, ſublato e medio tali principe, in eam deſperationem votum publicum redegit, ut timerent omnes Domitianos, Vitellios, et Nerones. Plus enim timetur de incertis moribus principis, quam ſperatur." Fl. Vop. in Caro. 1.

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which prohibited them from engaging in any military employments, though ſeveral of the ſucceeding reigns were very favorable to their intereſts; but ſitting down contentedly, in the midſt of eaſe and affluence, which they expected would be eternal, they opened a way both to the ſoldiers and barbarians to domineer over themſelves and their poſterity [55].

Diocletian, A. D. 284.

Whatever was wanting to complete the humiliation of the ſenate, was effected by Diocletian; who was advanced entirely by the favor of the army, out of reſpect to his abilities [56]; but, being himſelf of a very mean origin [57], he had no ſuch natural connexion with that venerable body, as to induce him to promote its intereſts, or uphold its power. This Emperor is univerſally acknowledged to have poſſeſſed a great ſhare of wiſdom, ſagacity, diligence and activity; and to have been well qualified, according to the ideas of thoſe times, for the eminent ſtation to which he was exalted [58]. But the pride of his heart, and the inſolence of his manners, tarniſhed the luſtre of theſe valuable endowments.

[55] Theſe are the obſervations of a conciſe, though ſometimes very judicious, writer, who lived in the age immediately following, and, moſt probably, ſpoke from the beſt information: "Abhinc militaris potentia convaluit, "ac ſenatui imperium, creandique jus prin"cipis ereptum ad noſtram memoriam; in"certum an ipſo cupiente per deſidium, an "metu diſſenſionum odio. Quippe amiſſo "Gallieni edicto, refici militia potuit, con"cedentibus modeſte legionibus, Tacito "regnante, neque Florianus temere inva"ſiſſet: aut judicio, manipularium cuiquam, "bono licet, imperium daretur; ampliſſimo "ac tanto ordine in caſtris degente. Verum "dum oblectantur otio, ſimulque divitiis "pavent, quarum uſum affluentiamque æter"nitate majus putant, munivere militari"bus, ac pæne barbaris, viam in ſe ac "poſteros dominandi." Sex. Aur. Vict. de Cæſ. 37.

[56] "Exercitus—Diocletianum imperato"rem creavit." Eutr. 9. 13.

[57] "Dalmatia oriundum, virum obſcuriſ"ſime natum, adeo ut pleriſque ſcribæ filius, "a nonnullis Anulini ſenatoris libertinus "fuiſſe credatur." Id. ib.

[58] "Ducum conſilio, Tribunorumque Va"lerius Diocletianus domeſticos regens ob "ſapientiam deligitur." Sex. Aur. Vict. de Cæſ. 39. "Diocletianus moratus callide "fuit, ſagax præterea, et admodum ſubtilis "ingenio, et qui ſeveritatem ſuam aliena "invidia vellet explere. Diligentiſſimus ta"men, et ſolertiſſimus princeps," Eutr. 9. 16.

The

CHAP. IX.

The generality of his predeceſſors, however deſpotic at heart, never ventured to put on any habit of dignity, except a robe of purple; ſtudiouſly avoiding all other outward diſtinctions, which might render them objects of ſuſpicion or envy. But Diocletian, diſdaining ſo modeſt a rule, purpoſely affected a gorgeous and coſtly ſtyle of dreſs, peculiar only to the haughty monarchs of the Eaſt. In imitation of thoſe deteſtable tyrants, Caligula and Domitian, he aſſumed the title of *Lord*, and cauſed himſelf to be approached with adoration, as if he had been a deity. Thus verifying a common obſervation, founded in the general nature of mankind, and in the experience of all ages, that ſuch unexpected tranſitions from obſcurity to power, have a direct tendency to vitiate the affections of theſe favorite ſons of fortune; and to cauſe them to diſgrace the ſeat of honor with an exceſs of pride, ambition, and inſolence [59].

All former Emperors, when at leiſure from the buſineſs of war, uſually fixed their reſidence in the capital; where they adminiſtered juſtice in their own perſons; enacted laws with the advice of their conſiſtory; diſcharged the various duties of their reſpective civil offices; and added conſequence and authority to the ſenate, by appearing always at the head of it. Thus the form of the antient republican government was in ſome meaſure preſerved, though the ſpirit was loſt. But Diocletian adopted the very reverſe of this wiſe policy. Determined to be a monarch in appearance, as well as in

59 "Qui in imperio Romano primus regiæ conſuetudinis formam magis, quam Romanæ libertatis invexit: adorarique ſe juſſit, cum ante eum cuncti ſalutarentur: ornamenta gemmarum veſtibus calceamentiſque indidit. Nam prius imperii inſigne in chlamyde purpurea tantum erat, reliqua communia." Eutr. 9. 16. "Magnus vir; his moribus tamen: quippe qui primus ex auro veſte quæſita, ſerici ac purpuræ gemmarumque vim plantis concupiverit: quæ quanquam plus quam civilia, tumidique et affluentis animi: levia tamen præ cæteris: namque ſe primus omnium Caligulam poſt, Domitianumque *Dominum* palam dici paſſus, et adorari ſe, appellarique uti Deum. Queis rebus, quantum ingenium eſt, compertum habeo, *humillimos quoſque, maxime ubi alta acceſſerunt, ſuperbia atque ambitione immodicos eſſe.*" Sex. Aur. Vict. de Cæſ. 39.

BOOK III.

fact, he kept aloof from Rome, and is ſaid to have never honored it with his preſence more than once, during a reign of above twenty years. Carrying his legiſlative capacity conſtantly about him, he iſſued his edicts, which were pretty numerous, from the place of his perſonal abode, without waiting for the formality of the cuſtomary ſanction, which, in that ſituation, could not conveniently be obtained.

Being thus deprived of that conſtitutional and neceſſary relation to the imperial office, which it had always hitherto enjoyed, the ſenate daily loſt ſome part of its original importance; and though various traces of its legiſlative character are to be found in ſeveral ſucceeding centuries, they were but the broken and languid efforts of expiring ſtrength; and were much more the effects of the indulgence and condeſcenſion of particular Emperors, than of the principles of its antient eſtabliſhment.

The ſame cauſes occaſioned the gradual diſuſe of the civil offices and titles, under the color of which the princes preſided over the ſeveral departments of government. As ſome of them were local, and confined to the walls of Rome, the tribunate in particular, they could not, in their own nature, be exerciſed within the receſſes of a diſtant palace. The conſulſhip, indeed, was always excepted from the reſt; but that being the higheſt poſt of honor in the old conſtitution, and approaching the neareſt to the regal power, it continued to be a very frequent appendage to the imperial title, almoſt to the final extinction of the empire; as abundantly appears from the moſt authentic records now extant[60].

It is not to be denied, that Diocletian poſſeſſed many of the requiſites which, if properly applied, might have made him a great and worthy prince: but they were like the few flowery ſpots, thinly ſcattered over a deſolate plain; which cheer and relieve the eye for a

[60] Vide "Faſti Conſulares;" et M. Aur. Caſſiodori Chronicon.

CHAP. IX.

moment, while they cauſe the remainder to appear more dreary and tremendous. His policy was not of that generous kind, which had for its object the happineſs of his people; but was chiefly employed in rendering himſelf independent of the laws of his country; in detaching himſelf from the moſt reſpectable orders of the community; and in deſtroying the power of the eſtabliſhed council of the nation, with whom, it is the intereſt of every wiſe and moderate ſovereign, to preſerve the moſt cordial and friendly connexion.

But while he was thus gratifying his paſſion for deſpotiſm, at the expence of every remaining right of the Roman people, he unexpectedly drew a load upon himſelf, which he found his ſhoulders unable to bear. A vaſt territory, compoſed of an infinite variety of people, unconnected by any common tye of language, cuſtoms, or manners, could neither ſupport itſelf by any mutual ſpirit of union or affection; nor could it lie ſufficiently within the compaſs of his own eye, to be kept in due ſubjection by a mere reverence for his authority, or a dread of his arms. To theſe internal defects were added the numerous and formidable invaſions of foreign nations; all which induced him to divide his dominions among his collegues [61]; and to inveſt them with powers little inferior to his own, within their reſpective provinces. It is probable that he reſerved to himſelf a kind of precedence or ſuperiority over the whole, though it was more oſtenſible than effective. A partition of this nature neceſſarily broke the unity of the monarchy; gave his aſſociates too high an idea of their own conſequence, for them to ſubmit to his control; and propagated the flames of diſcord and diſſenſion among themſelves and their ſucceſſors, which were not extinguiſhed till ſeveral years after his death; when the ſovereignty was once more brought back into the hands of a ſingle perſon.

[61] "Quoniam bellorum moles—acrius angebat; quaſi partito imperio, cuncta quæ trans Alpes ſunt, Conſtantio commiſſa: Africa Italiaque Herculio: Illyricique oræ, uſque ad Pontî fretum, Galerio; cætera Valerius retentavit." Sex. Aur. Vict. de Cæſ. 39.

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Thus alarmed, mortified and diſappointed, he determined to lay down his imperial dignity, though he had ſo long enjoyed it in the higheſt degree of ſplendor and opulence. The calm and ſteady compoſure with which he executed this uncommon reſolution has been often extolled, as an inconteſtable proof of the moderation of his temper, and of his noble contempt of worldly ambition. But the tinſel charms of a crown make poor amends for its cares and anxieties. Even while in a private ſtation, he was frequently heard to declare, that *nothing was more difficult than to govern well*[62]. Theſe difficulties were verified by experience, and increaſed upon the approach of old age. Urged, therefore, by ſo many conſpiring cauſes, and having, with much perſuaſion, prevailed upon his principal collegue, Maximian, to keep him in countenance by his example, he reſigned the imperial faſces; and retired to the neighbourhood of his native city, where he ended his days in a peaceful ſolitude[63].

But this laſt ſcene of his political life, however it may have been applauded by the flatterers of his memory[64], ſhould rather appear, in the eyes of all men of true honor, as a baſe deſertion of his poſt in the

[62] "Ego a patre meo audivi," ſays the hiſtorian, "Diocletianum principem, jam "privatum, dixiſſe, *Nihil eſſe difficilius quam* "*bene imperare.*" Fl. Vop. in Aur. 43.

[63] "Namque imminentium ſcrutator, ubi "fato inteſtinas clades, et quaſi fragorem "quemdam impendere comperit ſtatus Romani: celebrato regni viceſimo anno valentior curam R. P. abjecit: cum in ſententiam Herculium ægerrimè traduxiſſet: cui "anno minus potentia fuerat." Sex. Aur. Vict. de Cæſ. 39. "Diocletianus vero apud "Nicomediam ſponte imperiales faſces relinquens, in propriis conſenuit." Id. ep. 39. "Cum ingraveſcente ævo, parum ſe "idoneum Diocletianus moderando imperio "eſſe ſentiret, auctor Herculio fuit, ut in "vitam privatam concederent, et ſtationem "tuendæ reipublicæ viridioribus junioribuſque mandarent. Cui ægre collega obtemperavit. Tamen uterque una die privato habitu imperii inſigne mutavit. "Conceſſerunt tunc Salonas unus, alter in "Lucaniam." Eutr. 9. 16.

[64] "Quanquam aliis alia æſtimantibus "veri gratia corrupta ſit; nobis tamen excellenti natura videtur ad communem vitam ſpreto ambitu deſcendiſſe." Sex. Aur. Vict. de Cæſ. 39. "Diocletianus privatus in villa, quæ haud procul a Salonis "eſt, præclaro otio ſenuit: inuſitata virtute uſus, ut ſolus omnium, poſt conditum Romanum imperium, ex tanto faſtigio ſponte "ad privatæ vitæ ſtatum civilitatemque remearet." Eutr. 9. 16.

hour

hour of danger; a poſt, which it is the duty of a prince, above all others, to maintain with a courage and reſolution, proportionate to the extremity of the impending evil; and to ſtand or fall with that country, of which he is the conſtitutional guardian and protector. He ſeems, however, to have felt himſelf ſo perfectly happy in his retreat, that when his former reſtleſs and ambitious partners earneſtly ſolicited him to reſume the government, he anſwered, with a truly philoſophical indifference, that, could they but ſee the pot-herbs raiſed by the labor of his own hands in the gardens of *Salonæ*, they would think it a vain attempt to entice him back again to that ſtation, in which he had heretofore experienced ſo little ſolid ſatisfaction[65]."

Upon this famous abdication, the imperial power paſſed quietly into the hands of the remaining collegues; the moſt material conſequence of which was the eſtabliſhment of a precedent for a mode of ſucceſſion, by the mere perſonal appointment of the reigning prince, to the entire excluſion both of the ſenate and army; which, though not entirely new, was an open invaſion of the rights of the other conſtituents. Nothing more was wanting to effect the ruin of the antient form of government, and to reduce the whole to one gloomy and formidable ſcene of monarchical deſpotiſm. Rome, now utterly deſerted by her ſovereigns, declined daily in her dignity and importance; and had ſoon the mortification to ſee a new rival riſing into affluence and power, under the nurturing hands of her own recreant offſpring.

[65] "Qui dum ab Herculio atque Galerio "ad recipiendum imperium rogaretur, tanquam peſtem aliquam deteſtans, in hunc "modum reſpondit: *Utinam Salonæ poſſetis "videre olera noſtris manibus inſtituta, pro"fecto nunquam iſtud tentandum judicaretis.*" Sex. Aur. Vict. ep. 39.

THE

THE HISTORY OF THE LEGAL POLITY of the ROMAN STATE; AND OF THE RISE, PROGRESS, and EXTENT OF THE ROMAN LAWS.

BOOK IV.

The Imperial Government, from the Removal of the Seat of Empire to Byzantium by Conſtantine, to the Revival and Diffuſion of the Roman Laws over Europe in the Twelfth Century.

CHAP. I.

The State of the Roman Government and Laws, from Conſtantine to Juſtinian.

THE hiſtory of the Roman empire, for ſeveral paſt ages, was, in effect, the hiſtory of the whole civilized world, as far as it was then known. It comprehended the remains of the three great monarchies, ſo clearly predicted by the deciſive voice of holy

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holy writ; and extended to the utmoſt weſtern limits of what was thought the habitable earth. But this bright and magnificent image of prophetic foreſight had now received its moſt fatal ſhock, from *the ſtone cut out of the mountain without hands*; and ſtood tottering upon its foot of clay [1]. The ſurrounding nations, which, from a dread of its power, or from the hopes of its protection, had hitherto bent their knees in token of abject ſubmiſſion, being well aſſured of its preſent debility, prepared on all ſides to revenge their former oppreſſions, or to enrich themſelves with its ſpoils. The bleak and barren deſarts of Scythia and Tartary poured forth their famiſhed and hardy progeny, to ſeek for more comfortable habitations in the plentiful and luxurious regions of the South; where they ſoon laid the foundations of thoſe kingdoms which have ſince given laws to the European world [2]. Such are the events which characteriſe the fourth and ſome following centuries; and afford a moſt awful ſubject of reflexion to all thoſe, who are diſpoſed to entertain a juſt ſenſe of the unremitting influence of Divine Providence over the affairs of the univerſe.

A. D. 323.

The civil broils, which had ariſen from the impolitic partition of Diocletian, ended with the conqueſt and death of Licinius, whereby Conſtantine became the ſole ſovereign of the Roman empire [3]: a revolution, pregnant with many very important conſequences; the moſt intereſting whereof may be reckoned the comfortable repoſe, which Chriſtianity began now to enjoy, after a long ſeries of tyrannical and bloody perſecution; and the honorable reception it obtained under the wings of the imperial power. Theſe happy events gave an entirely new turn to the whole ſyſtem of government throughout the empire; introduced a multitude of new combinations among mankind; and imprinted a new feature upon the face of civil policy in

[1] Dan. ii. 31. & ſeq.
[2] V. Lowth's Comm. on Dan. c. ii. & vii.
[3] "Eo modo reſpublica unius arbitrio geri "cæpit." Sex. Aur. Vict. de Cæſ. 41.

general, the moſt ſtriking and durable of all thoſe, which have diſtinguiſhed the conſtitutions of the modern from thoſe of the antient world [4].

It is a misfortune, moſt ſincerely to be lamented by all thoſe who undertake to comment upon the events of the preſent period, that true learning was now ſo much ſunk below her meridian, as to leave but a few glimmering beams, to conduct an inquiſitive traveller through the dark mazes of a vaſt and intricate wilderneſs. Credulity and inattention, a quaint and barbarous ſtyle, with a want of ſound erudition, were the general blemiſhes and diſgrace of the pretenders to literature in thoſe ages. In addition to theſe evils, the gall of religious prejudice, the deadly poiſon of hiſtoric truth, had ſo tinctured the pens, and infected the paſſions, of the very beſt writers of both denominations; that, while the Pagans can hardly ſpeak with common patience or decency of thoſe princes, who were the moſt diſtinguiſhed for their patronage of the true religion [5]; the Chriſtians, exaſperated by a deep ſenſe of their former ſufferings, treat the memory of their perſecutors with a bitterneſs and acrimony, very inconſiſtent with the charitable principles of their holy profeſſion. While the former either deride or deny the moſt ſacred truths of the Goſpel; the others, elevated by their ſudden tranſition to a ſtate of tranquillity and honor, are too fond of multiplying miracles, and of aſcribing many fortunate occurrences to the ſupernatural interpoſition of the Almighty; who, having once

[4] As Conſtantine was the firſt of the Roman princes, who gave a regular and permanent eſtabliſhment to the Chriſtian church, it might be expected that we ſhould, in this place, take more particular notice of that memorable event. But, as that is more immediately connected with eccleſiaſtical hiſtory, it will be more proper to reſerve it for the ſubject of a ſeparate work, which, among other curious matters, is deſigned to contain an inquiry into the origin and progreſs of the *Canon Law*.

[5] Of theſe the principal were, Julian, whoſe partiality was aggravated by his apoſtacy; and Zoſimus, whoſe determined bigotry made him repreſent as fact whatever his prejudices conceived.

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manifeſted his glory to the world, and eſtabliſhed the worſhip of himſelf by ſigns and wonders, hath, in later times, more uſually choſen to effect his gracious purpoſes, by the ordinary, though not leſs providential, operations of ſecondary cauſes[6].

Theſe difficulties conſidered, large allowances will ever be made, by a learned and indulgent world, for every attempt to elucidate the hiſtory of an age, which has been ſo differently repreſented by theſe writers, who, living ſo near the times, certainly enjoyed better opportunities of information, than their prejudices would permit them to uſe. Perhaps, therefore, the reader may derive more real inſtruction from the diſpaſſionate remarks and deductions of the judicious and enlightened hiſtorians of modern times, than from the leſs accurate and impartial records of antiquity[7].

A general view of the character and actions of Conſtantine.

Conſtantine, on his firſt entrance upon the ſcene of public life, attracted the notice of an admiring world, by a numerous aſſemblage of heroic accompliſhments[8]; but a fondneſs for popular applauſe and military glory predominated through every part of his conduct[9]. Theſe paſſions, though the ſprings of his nobleſt actions, often degenerated into their natural extremes of vanity and ambition; and, among other ill conſequences, tempted him to affect the coſtly and

[6] Lactantius and Euſebius have ſometimes erred in theſe particulars; though, in general, great reſpect is due to their candor and veracity.

[7] For this purpoſe we would wiſh to recommend to our reader's notice the very celebrated and valuable work of Giannone, intitled, *Iſtoria Civile del Regno di Napoli*; the firſt edition of which was publiſhed, without *mutilations*, in Naples, 1723. From hence, as well as from *Gothofred*'s elaborate Commentary upon the *Theodoſian Code*, and from other later authors of approved character, we have deduced a variety of uſeful information; our obligations for which will be gratefully acknowledged in the remaining part of this Work.

[8] "Vir, primo imperii tempore, optimis "principibus, ultimo mediis comparandus. "Innumeræ in eo animi corporiſque virtutes "claruerunt." Eutr. 10. 4.

[9] "Fuit ultra quam æſtimari poteſt laudis "avidus." Sex. Aur. Vict. ep. 41. "Mi-"litaris gloriæ appetentiſſimus, fortuna in "bello proſpera fuit; verum ita, ut non "ſuperaret induſtriam." Eutr. 10. 4.

gorgeous

gorgeous ornaments of royalty [10], and to connect the idea of ſole and abſolute power with the imperial dignity. Born in an age when the free ſpirit of old Rome had been long extinct, and ſeduced by the fallacious example of Diocletian and his other vicious predeceſſors, he perhaps miſtook uſage for right; and conſidered this cuſtomary uſurpation upon the liberties of his ſubjects, only as an aſſertion of the lawful prerogatives of his ſtation.

His paſſion for military fame was amply gratified by a long courſe of brilliant ſucceſſes, earned by a moſt indefatigable induſtry, and highly merited by the merciful uſe he made of his victories; ſuch as will ever diſtinguiſh the genuine hero from the ſavage robber. His abolition of thoſe cruel inſtruments of torture, hitherto ſo frequently employed againſt the unfortunate captives, gained him the univerſal eſteem and veneration of theſe barbarous nations, who reſounded his praiſes in ſtrains almoſt approaching to adoration [11].

Being in full poſſeſſion of the ſole legiſlative power, by the death of Licinius, he inſtantly repealed all the unconſtitutional edicts of that tyrant, and of his corrupt judges; at the ſame time confirming all their juſt and legitimate acts, and giving a new ſanction to the antient laws, with the addition of many of his own [12]. Several of theſe were equitable and politic; while ſome have been deemed unne-

[10] "Habitum regium gemmis, et caput "exornans perpetuo diademate." Sex. Aur. Vict. ep. 41.

[11] "Nam etiam Gothos poſt civile bellum "variè profligavit, pace his ad poſtremum "datâ, ingentemque apud barbaras "gentes memoriam gratiæ collocavit." Eutr. 10. 4. "Denique Conſtantinus cunctos "hoſtes, honore ac fortunis manentibus, "texit recepitque; eò pius, ut etiam vetus "veterrimumque ſupplicium patibulorum "et cruribus ſuffringendis primus removerit. Hinc pro conditore ſeu deo habitus." Sex. Aur. Vict. de Cæſ. 41.

[12] "Remotis Licinii tyranni conſtitutionibus "et legibus, omnes ſciant veteris juris "et ſtatutorum noſtrorum obſervari debere "ſanctionem."—"Tyranni et judicum "ejus geſtis infirmatis, nemo per calumniam, "vel id quod ipſe ſponte fecit evertere, "nec quod legitime geſtum eſt."—"Quæ "tyrannus contra jus reſcripſit, non valere "præcipimus: legitimis ejus reſcriptis minime impugnandis." Cod. Theod. 15. 14. 1, 2, 3.

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ceſſary, and others ſevere"[13]; thoſe eſpecially which were levelled againſt calumny and falſe accuſations[14]; crimes of ſo infamous and pernicious a nature, that they could not eaſily be treated with greater rigor than they deſerved.

The ſame obſervation will apply to thoſe laws which he enacted to put a ſtop to the practice of uſury, now grown to an enormous and oppreſſive exceſs. This, indeed, was an evil of a very antient ſtanding in the Roman ſtate, which had frequently interrupted the domeſtic peace and happineſs of individuals; had been the occaſion of many dangerous popular commotions; and had generally eluded the vigilance and wiſdom of the moſt active and careful legiſlatures.

Of the progreſs of Uſury.

One principal cauſe, which placed this miſchief ſo much beyond the reach of redreſs, was, the encouragement it received from the example of the firſt nobility in Rome; who uſed to lend money to the princes in alliance with the empire, both to keep them in a greater ſtate of dependence, as well as to increaſe their own wealth. With this view, Pompey advanced ſuch an immenſe ſum to Ariobarzanes, king of Cappadocia, that the intereſt alone amounted to thirty-three Attic talents a month, equivalent in theſe days to ſix thouſand pounds ſterling: and even this, great as it may appear, was eſteemed very reaſonable for the time. Cicero affects at leaſt to applaud the moderation of Pompey, for contenting himſelf with ſo much leſs than the ordinary rate, and for not calling in the principal; while the wretched monarch, having neither treaſury nor revenue left[15], was poor even to

[13] "Multas leges rogavit; quaſdam ex "bono et æquo, pleraſque ſuperfluas, non"nullas ſeveras." Eutr. 10. 4.

[14] "Commodiſſimus tamen rebus multis "fuit: calumnias ſedare legibus ſeveriſſi"mis." Sex. Aur. Vict. ep. 41.

[15] "Ei tamen (ſc. Pompeio) ſic nunc ſol"vitur, triceſimo quoque die talenta Attica "xxxiii. et hoc ex tributis: nec id ſatis ef"ficitur in uſuram menſtruam. Sed Cnæus "noſter clementer id fert: ſorte caret; uſu"râ, nec eâ ſolidâ, contentus eſt. Alii ne"que ſolvit cuiquam, nec poteſt ſolvere: "nullum enim ærarium, nullum vectigal "habet." Cic. ad Att. 6. 1. See alſo Hooke's Rom. Hiſt. 9. 8.

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a proverb[16], and utterly unable to ſatisfy the demand of a ſingle creditor.

It would be a matter of great curioſity, to trace out the origin and further progreſs of theſe evils, together with the ſeveral hiſtorical events which were the conſequences of them, and the numerous proviſions made to correct them; but a diſquiſition of this kind would lead us too far beyond the bounds of our preſent deſign. Suffice it, therefore, to obſerve, that the ordinary and legal rate of intereſt, at moſt periods of the antient conſtitution, was fixed at the one-hundredth part of the ſum borrowed, to be paid every month; amounting to twelve *per cent.* by the year[17]. This remained the conſtant rule for ſeveral ages[18]; though various other modes of extortion had been invented, from time to time, to evade its force. Among the reſt, it became a common cuſtom to advance fruits, inſtead of coin, and to receive the intereſt in kind. This, however, leaving room for many ſcandalous oppreſſions, Conſtantine publiſhed an edict, to confirm the old law with regard to money; and likewiſe to limit the proportion of uſury, that was to be returned in commodities, to-

[16] "Mancipiis locuples, eget æris Cappadocum Rex."
Hor. epiſt. 1. 6. 39.

[17] This was called by the name of "Uſura Centeſima," and likewiſe "Unciaria," which was firſt ſettled by the laws of the Twelve Tables; and if any one exacted more, he was liable to the penalty of four times the principal. "Si quis unciario fœnore amplius fœneraſſit, "quadruplione luito." Vid. Grav. O. J. tab. iii. But, being often violated by the extortions of uſurers, it was confirmed by another law, at the inſtance of the Tribunes, A. U. C. 396. "De unciario fœnore, a "M. Duilio, L. Mænio, tribunis plebis, "rogatio eſt perlata: et plebs aliquanto eam "cupidius ſcivit, accepitque." Liv. 7. 16. The unrelenting ſeverity with which this monthly intereſt was uſually exacted, is drawn with great humor by the elegant Satiriſt, in the following alluſion:

——"Paulum deliquit amicus,
"Quod niſi concedas, habeare inſuavis; "acerbus
"Odiſti, et fugis, ut Druſonem debitor "æris;
"Qui, niſi cum *triſtes* miſero venere Ca- "*lendæ*,
"Mercedem, aut nummos, unde unde ex- "tricat amaras
"Porrecto jugulo hiſtorias, captivus ut audit."
Hor. Sat. 1. 3. 84, &c.

[18] Vid. J. Pauli ſent. 2. 14. et Calv. Lex. Jur. in verb. *Uſura Centeſima.*

one-

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one-third of the quantity borrowed [19]. But, as neceſſity is not eaſily reſtrained within the pale of civil authority, and as avarice is ever ready to take advantage of its demands, many abuſes were ſtill practiſed againſt the indigent. This, in time, obliged the Emperor Valentinian, and his collegues Theodoſius and Arcadius, to paſs a new law, whereby they revived the rigor of the Twelve Tables, and enacted, that whoever ſhould in future receive more than the antient legal intereſt, ſhould inſtantly, and without delay, be fined in the quadruple value of what he had ſo extorted. They had even a retroſpect to thoſe who had offended before the law took place, on whom they inflicted a double penalty [20]. Theſe laws ſeem to have continued in force, without any alterations or additions, till the time of Juſtinian, who was ſtill obliged to increaſe their number [21], though, moſt probably, with as little effect.

No part of Conſtantine's adminiſtration is more commendable than his edicts for the collection of the public revenue, in which he has ſtrictly prohibited the application of torture and impriſonment, the ordinary engine of terror and oppreſſion, in uſe with the cruel and violent magiſtrates of thoſe ages; juſtly thinking, that a priſon was only calculated for the confinement of thoſe, who were guilty of ſuch crimes as were dangerous to ſociety. But with regard to the mere debtors to the State, he directed them only to be put under a large

[19] "Quicunque fruges humidas vel arentes indigentibus mutuas dederint, uſuræ nomine tertiam partem ſuperfluam conſequantur; id eſt, ut ſi ſumma crediti in duobus modiis fuerit, tertium modium amplius conſequantur. Quod ſi conventus creditor, propter commodum uſurarum debitum recuperare noluerit, non ſolum uſuris, ſed etiam debiti quantitate, privandus eſt, quæ lex ad ſolas pertinet fruges; nam, pro pecunia, ultra ſingulas centeſimas creditor vetatur accipere." Cod. Theod. 3. 33. 1.

[20] "Quicunque ultra centeſimam, jure permiſſam, aliquid ſub occaſione neceſſitatis eruerit, quadrupli pœnæ obligatione conſtrictus, ſine ceſſatione, ſine requie, protinus ablata redhibebit. Hi, verò, qui antea pari furore graſſati, uſpiam detegentur, in duplum extorta reſtituant." Ib. i. 2.

[21] C. 4. 32. 26—30.

and

and gentle cuſtody of a guard; and, if they perſevered in their refuſal of payment, their peers or fellow-citizens ſhould then be permitted to diſtrain upon their goods, ſtill obſerving a due proportion between the quantity of the debt, and the value of the debtor's fortune; which he conſidered as the moſt equitable method of reducing ſuch obſtinate offenders to reaſon[22]: and, in general, he forbad all extortions, under pain of capital puniſhment[23]. The principle of theſe laws would be no diſgrace to a much more free and perfect government; and they have been already duly honored by the notice of former writers[24]. But, as they proceeded from the immediate, uncontrouled will of this illuſtrious emperor; and amount to a much ſtronger and more unequivocal evidence of his genuine diſpoſition, than can poſſibly be collected from the imperfect repreſentations of any partial or ill-informed hiſtorian; they well admit to be again made an object of public attention.

However well-diſpoſed Conſtantine himſelf might have been to perform the part of a good prince, he much injured his own reputation, by an unlimited indulgence of his miniſters and favorites;

[22] "Nemo carcerem plumbatarumque "verbera, aut pondera, aliaque ab inſolentia judicum reperta ſupplicia, in debitorum ſolutionibus, vel a perverſis, vel ab iratis judicibus, expaveſcat. Carcer pœnalium, carcer hominum noxiorum, eſt officialium, et cum denotatione eorum judicum, quorum de officio coerciti, citatiores eſſe debebunt, qui contra hanc legem admiſerint: ſecuri juxta eam tranſeant ſolutores. Vel certe ſi quis tam alienus ab humano ſenſu eſt, ut hac indulgentiâ ad contumaciam abutatur, contineatur aperta et libera et in uſus hominum conſtituta cuſtodia militari. Si in obdurata nequitia permanebit, ad res ejus omnemque ſubſtantiam cives ejus accedant; ſolutionis obſequio cum ſubſtantiæ proprietate ſuſcepto. Quâ facultate præbitâ, omnes fere credimus proniores ad ſolvenda ea, quæ ad noſtri uſus exercitus, pro communi ſalute, poſcuntur." Cod. Theod. 11. 7. 3.

[23] "Stationariis primipilarium, quorum manifeſta ſunt loca, coram mandatum eſt, ut, ſi aliquid extra modum extorſerint, ſciant ſe capite puniendos." Id. 8. 4. 2.

[24] *General Hiſtory of the World*, 2. 1. p. 35. by Dr. *Howell*; a writer of the laſt century, of remarkable induſtry, learning, and fidelity, though now almoſt forgotten; from whoſe accurate examination of antient authors, not otherwiſe very pleaſant to peruſe, we have derived great aſſiſtance in *this* part of the preſent work.

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vorites; whom he ſuffered to plunder the provinces without reſtraint, and to enrich themſelves with the ſpoils of the oppreſſed inhabitants[25]. His indefatigable panegyriſt has attempted his exculpation, by the pretence of the gentleneſs of his temper; as if that would not permit him to withdraw his confidence from thoſe, who, by hypocritical profeſſions of religion, and feigned attachments to his perſon, had once gained a firm ſeat in his affections. By a too implicit reliance upon theſe treacherous coadjutors, he was ſometimes guilty of errors very unbecoming his dignity; which, as the Hiſtorian is unable to conceal, he endeavours to aſcribe to a malignant ſpirit of envy, that, as it were by ſome preternatural influence, had thus polluted the general purity of his character[26]. But, in ſpite of this forced and over-ſtrained apology, the plain truth is, that a prince can never be too circumſpect in the choice of theſe inſtruments of power; as they are the eyes by which he ſees the ſtate of his dominions, and the members by which he adminiſters to the neceſſities of his ſubjects. If, therefore, theſe ſatellites of royalty have either weak heads, unclean hands, or corrupt hearts, he, who raiſed them to this unmerited eminence, is reſponſible for whatever miſchiefs they may bring

[25] "Sicut in nonnullos amicos dubius, ita "in reliquos egregius: nihil occaſionum "prætermittens, quo opulentiores eos cla"rioreſque præſtaret." Eutr. 10. 4. "Proximorum fauces aperuit primus om"nium Conſtantinus." Ammian. Marcell. 16. 8. edit. Gronov. 1693.

[26] Thus ſtands the account in the palliative and remarkable language of the Hiſtorian himſelf: Και τα της ψυχης δ' ὐσαυτως, εις ακρον της εν ανθρωποις τελειωσεως αυτῳ περιεπραττε· μεν εμπειροντι τοις καλοις· ὑπερβαλλοντως δε τῃ φιλανθρωπιᾳ· ὁ δη και μειπλον ενομιζετο τοις πολλοις, της των μοχθηρων ανδρων φαυλοτητος ἑινικα, οι της σφων κακιας την βασιλεως επιγραφοντο αιτιαν (αιτιαν). Και γαρ ει αληθως, δυο χαλεπα ταυτα κατα της δηλουμενης τυτυ χρονυς και αυτοι κατενοησαμεν. Επιτριβην απλητων και μοχθηρων ανδρων των παντα λυμαινομενων βιον· ειρωνειαν· αλαζον των την εκκλησιαν ὑποδυομενων, και το χριστιανων επιπλαστως σχηματιζομενων ονομα. Το δ' αυτυ φιλανθρωπον και φιλαγαθον, τα, τι της φυσεως ειλικρινες, και τυ τροπυ το φιλαληθες, ενηγεν αυτον φυσεινευ τῳ σχηματι των χριστιανων ειναι νομιζομενων, ενοσιαν τ' αληθη περι αυτον πεπλασμενῃ ψυχῃ σωζειν προσποιυμενον· ὁις ἑαυτον καταφυσεναι, ταχα αν ποτε και τοις μη περιπυσι ενεφερετο. Κηλιδα ταυτην τοις αυτυ καλοις επιφεροντος τυ φθονυ. Euſeb. de Vita Conſt. 4. 54. edit. Par. 1659.

bring upon his country, by their irregularities and miſconduct.

Among his other princely qualities, Conſtantine is allowed to have been a generous patron of the liberal arts, and of every branch of polite literature; to have been himſelf a ſcholar, and much devoted to ſtudy, writing, and meditation[27]. He was very diligent likewiſe in giving audience to ambaſſadors, and in hearing complaints from the Provinces[28]: and, notwithſtanding his known partiality to his favorites, he iſſued an edict, earneſtly inviting all thoſe, who had ſuffered injuſtice themſelves, or knew of any done to others, by his præfects, judges, or other dependents, to give full information; not only offering them ſecurity and redreſs, but likewiſe honors and rewards, for declaring the truth; and ſolemnly appealing to the Almighty to bear witneſs to the ſincerity of his promiſes[29].

It was the policy of Diocletian, as formerly obſerved[30], to mortify and humble the ſenate; partly from an affected contempt for a body, of which he never had any pretenſions to become a member;

[27] "Civilibus artibus et liberalibus ſtudiis deditus." Eutr. 10. 4. "Nutrire "artes bonas, præcipuè ſtudia literarum: "legere ipſe, ſcribere, meditari." Sex. Aur. Vict. ep. 41. Αυτος δε βασιλευς (ſcilicet Conſtantinus) ουτω την ψυχην λογικη συνισει παιδευσας, ως και μεχρι τελευτης συνηθως μεν λογογραφειν· συνηθως δε τας ωδους ποιεισθαι, και τας διατριβας τοις ακροαταις διδασκαλιας παρεχειν. Νομοθετειν δε συνηθως, τοτε μεν πολιτικους, τοτε δε στρατιωτικους· παντα δε προσφορως τη των ανθρωπων επιστηι βιφ. Euſeb. in Vit. Conſt. 4. 55.

[28] "Audire legationes et querimonias "provinciarum." Sex. Aur. Vict. ep. 41.

[29] "Si quis eſt cujuſcunque loci, ordinis, "dignitatis, qui ſe in quemcunque judicum, comitum, amicorum, vel palatinorum meorum aliquid veraciter et manifeſtè "probare poſſe confidit, quod non integrè "atque juſtè geſſiſſe videatur; intrepidus et "ſecurus accedat, interpellet me, ipſe audiam omnia, ipſe cognoſcam; et, ſi fuerit comprobatum, ipſe me vindicabo: dicat ſecurus, et benè ſibi conſcius dicat; ſi probaverit, ut dixi, ipſe me vindicabo de eo qui me uſque ad hoc tempus ſimulatâ integritate deceperit. Illum autem, qui hoc prodiderit et comprobaverit, et dignitatibus et rebus augebo. Ita mihi Summa Divinitas ſemper propitia ſit, et me incolumem præſtet, ut cupio feliciſſimâ et florentiſſimâ republicâ." Cod. Theod. 9. 1. 4.

[30] P. 412.

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and, ſtill more, with a view of depreſſing the only rival, which ſtood in the way of his abſolute power. The ſame plan was adopted by moſt of his other tyrannical aſſociates and their ſucceſſors. Licinius, an illiterate Barbarian[31], had wantonly degraded ſeveral of the ſenators, and had confined them to an occupation, ſomewhat reſembling that of Commiſſioners of the Navy[32]; whoſe duty it was to ſuperintend the tranſportation of corn, and other proviſions, to different parts of the empire, and to build ſhips of a given force, the diſtricts to which they belonged furniſhing materials. Theſe, and other burthens, they were obliged to ſupport at their own expence; and, in return, were intitled to a variety of privileges[33]. People of all ranks were liable to be called upon to take this office in turn, ſenators only excepted. Conſtantine, therefore, having reſcinded all the oppreſſive laws of Licinius, by a reſcript directed to the Fathers, gave them a commiſſion to examine the petitions of ſuch as had been depoſed by the Tyrant, and to reſtore them to their native rights. He empowered them likewiſe to elect ſuch others, whoſe births, fortunes, and characters, gave them juſt titles to that high honor; thinking it incongruous that any other than themſelves ſhould decide upon ſuch qualifications: but he directed that the names of the perſons thus choſen ſhould be returned to the Præfect of the City, that they might finally receive his own imperial confirmation[34]. This ſeems to have been the laſt act of authority, which he ever exerciſed

[31] His character is thus drawn by an antient Hiſtorian: "Avaritiæ cupidine omni-
"um peſſimus; neque alienus a luxu vene-
"reo; aſper admodum; haud mediocriter
"impatiens; infeſtus literis, quas, per in-
"ſcitiam immodicam, virus ac peſtem pub-
"licam nominabat, præcipuè forenſem in-
"duſtriam." Sex. Aur. Vict. ep. 41.

[32] They were called, as will be ſeen preſently, "Naviculârii," and ſometimes "Navarchi, Naucleri, Nautici, et Proſecu-
"tores." Howel, 2. 1. 8.

[33] Theſe are enumerated at large, Cod. Theod. 13. 5 & 6.

[34] "Super his qui ex ſenatoribus ad na-
"vicularium munus a tyranno dejecti ſunt,
"ac

exerciſed at Rome in his own perſon; as he ſoon afterwards proceeded towards the Eaſt, where the foundation and eſtabliſhment of his new city ſupplied him with ample employment for the remainder of his life.

There is great difference of opinion, concerning the motives which induced Conſtantine to raiſe up this dangerous rival againſt the antient metropolis [35]. The moſt probable is, that, by fixing the principal active power in ſo convenient and eligible a ſpot, he hoped to be nearer at hand, both to repel the attacks of thoſe warlike and barbarous nations which infeſted the northern frontiers of Thrace and Macedon, and likewiſe of the Perſians, who were now become equally formidable enemies on the eaſtern quarters. But this policy, though it ſtrengthened thoſe parts for a time, weakened the weſtern in the ſame proportion; and, in a ſhort courſe of years, occaſioned their total ſeparation.

Hitherto the cottage of Romulus had been the centre of the empire. From hence iſſued the armies that ſubdued, and the laws that civiliſed, the world. An unſhaken attachment to this venerable nurſery of their anceſtors, with an implicit confidence in the protection of their local deities, was the predominant character of the old Romans, and conſtituted the moſt laudable part of their ſuperſtition. The leaſt ſuſpicion of a deſign to remove from thence ſpred a juſt alarm through the whole city; and it was uſed as a popular topic of complaint againſt Julius Cæſar, that he meant to transfer the

" ac reſtitui ſuis natalibus deprecantur, pla-
" cuit veſtræ ſanctitati judicium examenque
" mandare: ut vos eligatis qui ſplendori
" veſtro, patrimonii viribus, et honeſtate
" vivendi, et natalium dignitate reſpondent.
" Incongruum eſt enim tantæ dignitatis
" arbitrium alteri potiùs, quam veſtris ſuf-
" fragiis ſententiiſque committere. Eorum
" autem, quos ut dignos elegeritis, nomina
" Præfectus Urbis nobis inſinuet, ut veſtrum
" judicium comprobemus." Cod. Theod. 15. 14. 4.

[35] " Primus urbem nominis ſui ad tantum
" faſtigium evehere molitus eſt, ut Romæ
" æmulam faceret." Eutr. 10. 4.

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ſeat of government to Alexandria or Ilium, having firſt drained Italy of its wealth and choſen bands; leaving Rome to the direction of his own adherents[36]. Though hiſtory has left us much in the dark with regard to his real intention, it is not utterly improbable that he had it in contemplation; and that the ſame idea was purſued by Auguſtus. It is likewiſe ſuppoſed to have given birth to one of the moſt ſublime and intereſting odes of Horace; who, to divert his patron from ſo unpopular a project, had introduced the antient and determined enemy of the Trojan name, threatening the moſt dreadful vengeance againſt all ſuch as ſhould preſume to reſtore thoſe hateful and devoted walls[37].

But theſe ſuperſtitious ſcruples had no effect upon the mind of Conſtantine; who, finding the ſituation of Byzantium likely to anſwer his moſt ſanguine hopes, extended its fortifications; adorned it with a great variety of public edifices; and ſpared neither expence nor labor to render it ſecure, commodious, and magnificent.

Having completed theſe additional improvements, in the ſpace of about two years, he called it after his own name; made it the capital of the Eaſtern diviſion of the empire; and inſtituted a ſenate, together with the ſame feſtivals and ſolemnities as were in uſe among the antient Romans[38]. But, at the ſame time, to preſerve

[36] "Quinetiam varia fama percrebuit, "migraturum Alexandriam vel Ilium, "tranſlatis ſimul opibus imperii, exhauſtâ- "que Italiâ delectibus, et procuratione ur- "bis amicis permiſsâ." Suet. in Jul. Cæſ. 79.

[37] "Trojæ renaſcens alite lugubri
"Fortuna triſti clade iterabitur,
"Ducente victrices catervas
"Conjuge me Jovis et ſorore."
Od. 3. 3. et Not. edit. Delph. Par. 1691.

[38] Νεαν Ῥωμην Κωνσταντινουπολιν ωνομασε· και βασιλιδα κατεστησε των ὁσοι την Ῥωμαιων ὑπηκοον γην οικουσι, προς αρκτον και νοτον και ἡλιον ανισχοντα, κ᾽ τα εν μεσῳ πελαγη, εκ των παρα τον ἱερον πολεων, κ᾽ επιδαμνου, κ᾽ προς τῳ Ιονιῳ κολπῳ, μεχρι Κυρηνης κ᾽ των τηδε Λιβυων παρα το βορειον καλουμενον Βυλευτηριον τι μεγα, ἡν συγκλητον ονομαζουσιν, ἱσον συνεστησαλο, τας αυτας ταξας τιμας κ᾽ ἱερομνιας, ἡ κ᾽ Ρωμαιους τους πρεσβυτερους εδος· εν πασι δε δικαι σπουδασας εφαμιλλον τη παρα Ιταλοις Ρωμη, την ὁμωνομον αυτῳ πολιν, ω δυναιτο. Sozom. Hiſt. Eccl. 2. 3.

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an outward ſhew of regard for Old Rome, he made no alteration in its form of government; continuing the ſenate, and all other magiſtracies, upon much the ſame footing as in former times. The new city, however, daily increaſed under the countenance and encouragement of its ſovereign; and ſoon excelled it in beauty, wealth, and population [39].

Whatever honor this illuſtrious prince might have derived from theſe numerous changes and improvements, it was greatly tarniſhed by ſome particular acts of injuſtice and oppreſſion, exerciſed upon a ſon, a wife, and ſeveral of his moſt faithful ſervants; who fell, the unpitied victims of his ſuſpicion and cruelty, by the hands of executioners and aſſaſſins [40]. Shocking as theſe facts are in the relation, they are too well founded in truth to be denied; though it is poſſible that they have been much aggravated by party clamors. For it is univerſally known, that the paſſions and prejudices of the two rival religions, then prevailing, were carried to ſuch a reproachful degree of exceſs on both ſides, that, while the bigotted Pagan has degraded him into a tyrant, the Chriſtian, no leſs zealous and injudicious, has exalted him into a ſaint. His memory has been loaded with a profuſion both of ſlander and panegyric, equally falſe and ill-founded; and there is ſo general a defect of harmony in the coloring of his character, that the moſt accurate and impartial eye can never paſs any certain judgment upon its true merit.

[39] Εις τοσαυτην γαρ, σην θειᾳ φαναι, επιδωκεν, ὡς καὶ τοις σωμασι καὶ τοις χρημασι μειζονα συνομολογεισθαι. Sozom. Hiſt. Eccl. 2. 3.

[40] "Verum inſolentia rerum ſecundarum aliquantum Conſtantinum ex illa favorabili animi docilitate mutavit. Primum, neceſſitudines perſecutus, Criſpum filium, egregium virum, et ſororis filium, commodæ indolis juvenem, interfecit; mox, uxorem; poſt, numeroſos amicos." Eutr. 10. 4.——"Fauſta conjuge, ut putant, ſuggerente, Criſpum filium necari jubet. Dehinc uxorem ſuam Fauſtam in balneas ardentes conjectam interemit; cum eam mater Helena dolore nimio nepotis increparet." Sex. Aur. Vict. ep. 41.

But,

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But, fortunately for the cauſe of truth, there is ample room, in the midſt of theſe very wide extremes, to do juſtice to his virtues, without being obliged to ſuppreſs or extenuate his failings. Admitting him to have been guilty of ſome particular inſtances of oppreſſion and cruelty, he unqueſtionably performed many important and meritorious ſervices to the public at large. His laws, which were numerous, wiſe, and liberal, clearly prove his warm regard for the perſonal rights and liberties of the people over whom he preſided[41]. By his valor and good fortune, he gave them a taſte of the glory of antient Rome; and, by his prudent and humane government, reſtored a temporary tranquillity to the whole empire[42].

The public adoption of a pure and divine faith, ſo diametrically oppoſite in its principles and tendency to a profane and contemptible ſuperſtition, occaſioned a neceſſary revolution in the former ſyſtem of juriſprudence; and called for a variety of new laws, to inſure it reſpect and ſtability. Theſe open to our view a boundleſs field of curious ſpeculation. But, being more intimately connected with eccleſiaſtical hiſtory, they muſt be deferred to a future work; in which it will be attempted to trace out the origin, and explain the nature, of that ſpiritual juriſdiction, which the corrupt and haughty miniſters of a meek and humble maſter dared to uſurp over the ignorant and timid princes of the middle ages.

Suffice it, therefore, at preſent, to advert to thoſe alterations, which were purely of a temporal kind; and were the more imme-

[41] Theſe laws are all preſerved in the *Theodoſian Code*, a work of which we ſhall ſpeak more particularly hereafter; wherein they are all regularly digeſted according to their reſpective ſubjects; and his name is always to be found at the head of each title to which they belong.

[42] "Quod ſanè P. R. ægerrimè tulit (ſc. "funus); quippe cujus armis, legibus, clementi imperio, quaſi novatam urbem Romanam arbitraretur." Sex. Aur. Vict. de Cæſ. 41.

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diate conſequences of the removal of the ſeat of empire from its primitive centre. Not that the laws themſelves, as far only as they concerned private and perſonal matters, underwent any very material changes, other than what daily experience, and the improving wiſdom of ſucceeding ages, gradually and imperceptibly introduce in all poliſhed and civilized ſtates. But the chief difference ſeems to have lain in the mode of adminiſtering them. Though the emperor's cabinet had long been the only ſource of legiſlation, yet juſtice was ſtill diſpenſed by the ordinary judges, under their original republican characters and denominations; with the reſervation of a dernier reſort to the prince, who was the "apex" of all judicial authority. But now the magiſtrates frequently changed their former appellations; or, even if they retained them, they found them united with ſome new office or juriſdiction[43]. The miniſters of juſtice were blended with thoſe of the police, and were, conſequently, too much the creatures of the emperors themſelves; which confuſion of the legiſlative with the executive power was highly dangerous, both to the lives and properties of the ſubject. However gently and beneficially it might have been exerciſed, by a juſt and merciful prince, it was eaſily converted into an inſtrument of injuſtice and terror, in the hands of a tyrant. Upon the whole, therefore, the cauſe of popular liberty gained no ground by the new regulations of Conſtantine, however happy the people in general might feel themſelves from the humanity of his adminiſtration.

It has been already obſerved, that Hadrian had projected a reformation of the whole Roman law, but lived only to finiſh the *Imperial Edict*. This work ſtood very high in the public

[43] Giann. 2. 5. An account of the magiſtrates under this new arrangement, with the nature of their ſeveral offices and juriſdictions, are particularly deſcribed in Cod. Theod. 1. 5—12.

eſteem;

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eſteem; and continued in force, with little variation, to the times of which we are now treating[44]. But, as every ſucceeding prince added ſomething to the former ſtock, the daily increaſing bulk of the imperial laws induced ſome other able and judicious profeſſors to digeſt them into a certain regular order, after that example.

Code of Papirius Juſtus.

The firſt of theſe attempts was made by Papirius Juſtus; who flouriſhed about the reigns of Commodus or Severus, and collected the conſtitutions of Verus and M. Aurelius Antoninus into twenty books[45].

Reports of Julius Paulus.

In the next age, the learned and induſtrious Julius Paulus, already ſpoken of[46], compiled ſix books of *Decrees*, or *Deciſions*, made by the emperors upon the hearing of cauſes[47]; which, from the title, ſeem to anſwer pretty exactly to the *Reports* of adjudged caſes in our modern courts of juſtice. Both theſe collections, which probably deſerved a better fate, are now totally loſt; except a few detached laws, diſpoſed according to their reſpective ſubjects, in different parts of Juſtinian's Pandects.

The continual diſtractions of the empire, for the major part of the century next ſucceeding the death of Alexander Severus, ſuſpended all farther improvements in the ſcience of juriſprudence. But the tranquillity enſuing from the firm eſtabliſhment of Conſtantine upon the imperial throne, and the attention paid by that prince himſelf to political reformation, probably encouraged others to exert their abilities to

[44] P. 305 and 386. Giann. l. 9.

[45] Jac. Gothofr. proleg. ad Cod. Theod. c. 1. Hein. Hiſt. Jur. Civ. § 309. Giann. l. 9. The curious reader, who is diſpoſed to trace out the ſcanty relics of them, which are ſtill preſerved in the Digeſt, will find them all pointed out in a work intitled, *Index Legum omnium quæ in Pandectis continentur*, p. 49. per *Jac. Labittum*; which is deſervedly commended by Giann. ut ſup. both for its utility and ingenuity. The edition here uſed was printed at Paris, 1557; but there are ſome others of a much later date.

[46] P. 393.

[47] The original title, which ſtill exiſts in the Digeſt, is *Libri Decretorum*, al. *Imperialium Sententiarum in cognitionibus prolatarum*. Ind. Leg. Lab. p. 79. Hein. ut ſup. § 343 & 347.

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the ſame uſeful purpoſes; and produced two more highly valuable collections.

Gregorian Code.

The firſt of theſe was called the *Gregorian Code*, from the author, Gregorius, or Gregorianus; who digeſted into order the chief, if not the whole, of the Imperial Edicts, from Hadrian down to the middle of the reigns of Diocletian and Maximian. From the fragments of theſe, which have been preſerved by ſome learned antiquaries of modern times[48], they appear to relate principally to private and perſonal rights, and to have conſiſted of at leaſt nineteen books: but many of theſe are entirely loſt; and the reſt are ſo few and imperfect, that it is impoſſible to form any juſt idea of the method and deſign of the whole.

A. D. 276.

Hermogenian Code.

The author of the ſecond collection was Hermogenes, from whom it received the name of the *Hermogenian Code*; the remains of which are comprized in a very few ſhort titles, containing only certain edicts of Diocletian and Maximian, by way, as it ſhould ſeem, of a continuation of the *Gregorian*[49].

The hiſtories of thoſe ages have taken but very little notice of either of theſe writers; ſo as to enable us to determine, with any degree of preciſion, in what time they lived, or what was the particular rank or quality of either. Some have carried Gregorius as far back as the reign of Valerian and Gallienus[50]; but this ſuppoſition is clearly confuted by the numerous laws of much later princes, ſtill extant among the fragments of his work. There is

[48] Particularly by Ant. Schultingius, in a work intitled, *Juriſprudentia Vetus Ante-Juſtinianea*, p. 682. Lug. Bat. 1717. For a further account, vid. Hein. Hiſt. Jur. Civ. § 367 & 368; et id. Proem. ad Ant. Rom. § 17 & 18: Giann. l. 9: and likewiſe Taylor's Elem. p. 17. in which writers all the principal authorities, relative to the ſubject, are accurately given.

[49] They are to be found likewiſe in Schult. p. 709. Vid. et Hein. Hiſt. Jur. Civ. § 358 et 370: et id. Proem. ad Ant. Rom. § 19; et Tayl. ut ſup.

[50] Grav. O. J. l. 131. and the authorities by him cited.

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as much uncertainty with regard to Hermogenes: though it is probable that he was nearly a cotemporary of Gregorius, but ſomewhat younger; and that he reached, if not ſurvived, the reigns of the ſons of Conſtantine.

There can be no queſtion, however, that both of them were eminent in the profeſſion of the law: and they might poſſibly have borne ſome offices of dignity and truſt under the government; which might have given them eaſier acceſs to the records wherein the materials were depoſited.

It is quite doubtful whether theſe Codes were undertaken by the ſpecial command of the emperors, or by the voluntary choice of the compilers. But it is certain that they were received in the public courts of juſtice; and that they were quoted, as authority, by the advocates and writers of that, and ſeveral ſubſequent ages[51]. They are likewiſe expreſsly referred to by Juſtinian, in the prefaces to his own Code; whereby all ſuitors and practitioners are prohibited, under ſevere penalties, from citing them, as law, for the future; ſuch parts only excepted, as he ſhould think proper to adopt into his new compilation[52].

Gregorius is not known to have been the author of any other work, than the Code before mentioned; no part of which has been honored by the notice of Juſtinian[53], excepting only in his prohibition

[51] Giann. 1. 9. who has referred to ſeveral inſtances of this kind.

[52] "Sciant omnes, tam litigatores, quam "diſertiſſimi advocati, nullatenus eis licere "de cætero conſtitutiones ex *veteribus tribus* "*codicibus*, quorum jam mentio facta eſt, "vel ex iis, quæ novellæ conſtitutiones ad "præſens tempus vocabantur, in cognitiona-"libus recitare certaminibus, ſed ſolum ei-"dem noſtro Codici inſertis conſtitutionibus "neceſſe eſt uti, falſi crimini ſubdendis "his, qui contra hoc facere auſi fuerint." Præf. de Juſt. Cod. confirm. § 3.

[53] Gothofred, in prol. ad C. Th. c. 1. § 1. has the following remark: "Ex Gregoriani "vero *libro* 5 de *nuptiis*, laudatur nobiliſſi-"ma Diocletiani lex ab Authore collationis "legum Moſaicarum, *tit. de inceſtis nuptiis*, "6. cujus pars extat l. 7. *C. Juſtin. eod. tit.*" and in this he is implicitly followed by

bition of the future uſe of it. Hermogenes, beſides his Code, compoſed *Epitomes of the Law*, in ſix books; very conſiderable extracts from which are incorporated in the Digeſt; and likewiſe a treatiſe on *Fideicommiſſary Truſts*, probably in four books, from whence the emperor has borrowed no more than a ſingle law[34].

Some very learned and judicious writers of later times have conjectured, that the lawyers of that age, moſt of whom ſtill adhered to the idolatrous ſuperſtition of their anceſtors, were jealous of the innovations made upon the antient ſyſtem of juriſprudence by Conſtantine, in conſequence of the eſtabliſhment newly given by him to the Chriſtian religion; and therefore, to prevent the imperial conſtitutions from corruption or neglect, and to preſerve them entire to poſterity, they took the foregoing method of reducing them into Codes[35].

But, if we can form any thing like an accurate judgment of the merits and deſign of theſe collections, from their preſent imperfect remains, they will be found to carry but very little internal evidence, two or three inſtances only excepted, of the religion of their reſpective authors. Their chief object ſeems to have been, to lay down rules for the regulation of private civil rights, independ-

by Giannone, 1. 9. But they have both fallen into a ſimilar error; as the 7th law of Juſtinian's Code does not relate to the ſubject of inceſtuous marriage; but is meant to define who are *mean women*, ſuch as ſenators are prohibited from marrying. The *Gregorian Law* referred to by theſe writers, as it ſtands among the fragments publiſhed by Schultingius, p. 700, is in the following words: "His, qui inceſtas nuptias per errorem contrahunt, ne pœnis ſubjiciantur, ita demum clementia principum ſubvenit, ſi, poſteaquam errorem ſuum reſcierint, illicò nefarias nuptias diremerint." The only paſſage which bears any relation to this, in the correſponding title of Juſtinian's Code, is in l. 4. from a Conſtitution of Valentinian, Theodoſius, and Arcadius; who, ſpeaking of the penalties to be inflicted upon ſuch as are guilty of this crime, add: "Quos tamen ita demum legis noſtræ laqueis eximi placuit, ſi, aut errore compertо, aut ubi ad legitimos pervenerint annos, conjunctionem hujuſmodi ſine ulla procraſtinatione diremerint."

[34] Ind. Leg. Lab. p. 91, 92.

[35] Giann. 1. 9. Hein. Hiſt. Jur. Civ. § 367.

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ently of any religious conſideration whatever; and, as ſuch, not likely to excite the apprehenſions or ſuſpicions of Chriſtian princes; who, notwithſtanding their many new regulations in favor of Chriſtianity, too often, through mere negligence, adopted the conſtitutions of their Pagan predeceſſors, though repugnant both to its tenets and intereſts[56]. It is, therefore, not improbable, that theſe uſeful works were undertaken with the concurrence and encouragement of Conſtantine, who was a ſteady and generous patron of learning; and eſpecially if it be true, as ſome ſuppoſe, that the compilers were men of eminence about the imperial court, and enjoyed the confidence of their reſpective ſovereigns.

A. U. C. 337.

The unaffected and univerſal lamentations of the people, on the death of Conſtantine, carried the ſtrongeſt evidence of the reality of his virtues. One of the moſt immediate ill conſequences of this melancholy event, was, a renewal of the impolitic practice of dividing the territories among ſeveral collegues, of which there had been already too many examples; whereby the unity of the imperial authority was broken, its ſtrength diminiſhed; and, for want of the ſpirited exertion of a ſole ruling power, the whole empire was diſturbed by the inroads of foreign enemies, or the pretenſions of domeſtic uſurpers. The aſſociates themſelves were likewiſe frequently embroiled in fatal diſſentions with each other; and the laws and conſtitution were made the ſport of military violence.

Sons of Conſtantine. A. D. 337.

The three ſons of Conſtantine were proclaimed by the army joint ſucceſſors to their father, and each took his ſeparate ſhare of the dominions[57]; which ſoon produced diſcontents and diſagreement between

[56] Several inſtances of this kind are to be ſeen in Goth. Proleg. ad C. Th. c. 2.

[57] "Quo mortuo—ad tres Orbis Romani "dominatio redacta eſt, Conſtantinum, et "Conſtantium,

between them, and ended in the death of the eldeſt, whoſe allotment reverted to the ſurvivors, according to the cuſtomary practice upon ſuch partitions[58].

Julian. A. D. 362.

Julian, though of the family of Conſtantine, and educated in the principles of Chriſtianity, was never ſincere either in the belief or practice of it. Being called to the throne, upon the death of Conſtantius, by the voice of the army, he openly profeſſed himſelf a Pagan, and took every meaſure in his power to reſtore the profane and impious worſhip of the primitive ages[59]. Every act of Conſtantine, in favor of Chriſtianity, he conſidered as an innovation upon the antient laws and cuſtoms of the empire[60]. He treated the profeſſors of that holy religion with divers indignities; and, though he did not go ſo far as to ſhed their blood[61], he expelled the biſhops and clergy from the principal cities[62], and deprived the Chriſtians of the benefits of a liberal education, by prohibiting the maſters to teach in their reſpective ſciences, unleſs they would abjure the Chriſtian faith: a ſtriking inſtance of into-

" Conſtantium, ac Conſtantem, filios Conſtantini. Hi ſinguli has partes regendas habuerunt. Conſtantinus junior cuncta trans Alpes: Conſtantius, a freto Propontidis, Aſiam atque Orientem: Conſtans, Illyricum Italiamque et Africam, Dalmatiam, Thraciam, Macedoniamque et Achaiam." Sex. Aur. Vict. ep. 41.

[58] " Conſtantinum, bellum fratri inferentem, et apud Aquileiam inconſultius prœlium aggreſſum, Conſtantis duces interemerunt. Ita reſpublica ad duos Auguſtos redacta eſt." Eutr. 10. 5.

[59] " Et quanquam a rudimentis pueritiæ primis inclinatior erat erga numinum cultum, paulatimque adoleſcens deſiderio rei flagrabat, multa metuens tamen, agitabat quædam ad id pertinentia quantum fieri poterat occultiſſimè. Ubi vero, abolitis quæ verebatur, adeſſe ſibi liberum tempus faciundi quæ vellet advertit, ſui pectoris patefecit arcana; et, planis abſolutiſque decretis, aperiri templa, ariſque hoſtias admoveri ad deorum ſtatuit cultum." Amm. Marc. 22. 5.

[60] Giann. 2. 5.

[61] " Religionis Chriſtianæ adſectator; perinde tamen, ut cruore abſtineret." Eutr. 10. 8.——Επει γαρ εκ παιδος τροπον διδασκαλου αυτω συγγενεσθαι τον Ἑλληνισμον βιαζεσθαι μεν η τιμωρεισθαι τους δημους μη θελοντας θυειν αδυλιας νενομικει. Soz. Hiſt. Eccl. 5. 15.

[62] Τους δε κληρικους η̃ τους παροικουντας των εκκλησιων επιλαυνειν των πολεων εσπευδε. Soz. Hiſt. Eccl. 5. 15.

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lerant zeal, which could not eſcape the cenſure even of his devoted Panegyriſt[63]. The ſame learned writer very candidly owns, that he was a much ſtricter obſerver of the ceremonies, than of the ſubſtance, of religion; that his piety, ſuch as it was, chiefly diſplayed itſelf in ſpilling the blood of innumerable herds of innocent cattle; inſomuch, that, had he returned alive from his Parthian expedition, he would hardly have found victims ſufficient to have ſatisfied his miſtaken devotion[64].

On the other hand, to take him in the moſt advantageous light poſſible, if philoſophy, unanimated by true piety, if a ſevere exerciſe of the merely moral virtues, without reference to any divine obligation, can atone for a perverſe defection from the ſublime truths, in which he had been educated from his youth; it would be high injuſtice to his memory to deny him a place among the moſt accompliſhed characters of his age[65]. In the infliction of puniſhments, he was ſevere without cruelty; and oftener threatened the ſword than uſed it[66]. With regard to ſenators, accuſed of capital offences; out of compliment to the prince, as being one of the number, they were permitted to enjoy their full liberty till after

[63] "Illud inclemens, quod docere vetuit "magiſtros rhetoricos et grammaticos Chriſtianos, ni tranſiſſent ad numinum cultum." Amm. Marc. 25. 4.——Τως Κριστιανως Ἑλληνικης παιδειας μετιχειν εκωλυε. Socr. Hiſt. Eccl. 3. 16.

[64] "Cultus numinum ſuperſtitioſus." Sex. Aur. Vict. ep. 43.——"Superſtitioſus magis "quam ſacrorum legitimus obſervator, innumeras ſine parcimonia pecudes mactans: "ut æſtimaretur, ſi revertiſſet de Parthis, "boves jam defuturos." Amm. Marc. 25. 4.

[65] "Æquaverat philoſophos et Græcorum "ſapientiſſimos." Sex. Aur. Vict. ep. 43.—"Cum enim ſint, ut ſapientes definiunt, "virtutes quatuor præcipuè, Temperantia, "Prudentia, Juſtitia, Fortitudo, eiſque accidentes extrinſecus aliæ, ſcientia rei militaris, auctoritas, felicitas, atque liberalitas: intento ſtudio coluit omnes ut ſingulas." Amm. Marc. 25. 4.

[66] "Quibus autem juſtitiæ inclaruit bonis, multa ſignificant. Primò, quod erat "pro rerum et hominum diſtinctione ſine "crudelitate terribilis; deinde, quod paucorum diſcrimine vitia cohibebat; tum "autem, quod minabatur ferro potius quam "utebatur." Id. ib.

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they were tried, and convicted, and degraded from their rank[67]. But, as this lenity rather bordered upon imprudence, and gave too frequent opportunities to traitors, and other notorious offenders, to eſcape the juſt rewards of their crimes, this indulgent part of the law was afterwards omitted by Juſtinian[68].

Julian was very exact and punctual in the adminiſtration of private juſtice; and frequently preſided in his own Conſiſtory, ſurrounded and aſſiſted by his great officers of State[69]. His laws, in general, when not dictated by religious prejudice, are ſenſible and politic[70]; and have been adopted, in ſome inſtances rather too indiſcriminately, into the Codes of his ſucceſſors[71].

The cauſe of idolatry expired with Julian: and from henceforward Chriſtianity reſumed her empire, under the protection of the ſucceeding princes, who gloried in the title of its patrons and defenders; though not always ſo deeply tinctured with its doctrines, as to underſtand or promote its true intereſts. All of theſe, to the younger Theodoſius, however different in their perſonal characters, purſued the ſame plan of government that was ſettled by Conſtantine. They continued, as uſual, to iſſue their edicts, many of which were generally well ſuited to the occaſions that required A. D. 363

67 "Jus ſenatorum et auctoritatem ejus "ordinis, in quo nos quoque ipſos eſſe numeramus, neceſſe eſt ab omni injuria "defendere. Si quis ergo ſenator ſocius "criminis infimulatus fuerit, ante cauſæ "cognitionem, omni terrore calumniæ, "omni ſuſpicionis moleſtiâ careat, vacuus "ſit prorſus et liber, antequam, re convictâ, crimen agnoſcat et exuat dignitatem." C. Th. 9. 2. 1.

68 C. 12. 1. 8.

69 The following curious Law, or rather Notarial Act, ſhews the perſons of which this court was generally compoſed. "Pars "actorum habitorum apud imperatorem Julianum Auguſtum, Mamertino et Nevittæ "Coſs. x. Kal. April. Conſtantinop. in "*Conſiſtorio*, adſtante Jovio, viro clariſſimo, "Quæſtore; Anatolio, Magiſtro Officiorum; Felice, Com. S. L. &c. Imp. Julianus dixit:" Then follows the Imperial "Decree, in Greek: Τηικαυτα γεγραμματια μεγαλην ισχυν εχει, οταν περι αυτων των γεγραμματιων μη αμφισβητησις εξ αλλων αφιλη βεβαιουσθαι. C. Th. 11. 39. 5.

70 "Jura condidit non moleſta, abſolutè "quædam jubentia fieri vel arcentia, præter "pauca." Amm. Marc. 25. 4.

71 Hein. Hiſt. Jur. Civ. § 373.

them;

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them; though the antient elegance and conciſeneſs of the legiſlative ſtyle were too often involved in a verboſe and oſtentatious diſplay of imperial conſequence.

Declined ſtate of Juriſprudence.

The confuſions of the Roman Empire, the fluctuating ſtate of the government, and the daily encroachments of arbitrary power, had thrown a languor over the liberal arts and ſciences, and had reduced every branch of polite learning to a general decline. Juriſprudence ſuffered equally with the reſt; and, from having been the favorite occupation of the firſt orators and ſtateſmen, in the moſt flouriſhing ages both of the republic and monarchy, at leaſt as far as the time of Alexander Severus, was now conſigned over to the moſt illiterate and contemptible plebeians, and liberated ſlaves[72].

In the more liberal and diſintereſted ages of the republic, the chief advantages derived from the practice of the law, were, honor, applauſe, and the heart-felt ſatisfaction of employing great and refined talents in defence of the poor, the ignorant, and the oppreſſed. Mere fame, however, being found a very inſufficient recompenſe for the daily fatigues both of the mind and body, it ſoon became an object of private lucre. Perhaps, likewiſe, the practitioners began to conceive too high an idea of their own importance; and to ſet ſo great a value upon their own ſervices, that the indigent were often obliged to yield up their rights to the rapacious demands of the rich, for want of ability to purchaſe the aſſiſtance of a ſkilful advocate. Some ſimilar abuſe moſt probably gave occaſion to the famous law of M. Cincius Alimentus, the Tribune, ſo early as the

[72] Hein. Hiſt. Jur. Civ. § 375.——"Juris civilis ſcientia, quæ Manlios, Scævolas, Servios, in ampliſſimum gradum dignitatis evexerat, libertorum artificium dicebatur.—Itaque omne ſtudium pecuniæ coacervandæ. Tanto enim vir quiſque melior, quanto pecuniofior." Cl. Mamman. 11. c. 20.

times

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times of the Second Punic War, which was intended to revive the primitive cuſtom of gratuitous advocation[73].

Though this Law kept up the dignity of the profeſſion, and preſerved it in very honorable hands for ſeveral ages afterwards, it was far from producing the whole of the intended effect. Some of theſe orators, as before, turned their patronage to good profit; while others, more delicate, ſatisfied their ſcruples by the acceptance of a ſubſtantial preſent, in lieu of money. This ſeems to be owned by Cicero himſelf, in one of his epiſtles to Atticus, where he ſpeaks, in a jocular manner, of receiving ſome books, which he had been adviſed would not be conſidered as a breach of the Cincian Law[74]. Such pitiful evaſions were not likely to remedy the abuſe; which ſtill continuing to increaſe, in the age immediately ſucceeding, Auguſtus procured a decree of the ſenate, to prohibit every kind of reward, under penalty of the quadruple value[75]. A. U. C. 737.

Thus ſtood the Law till the time of Claudius; when a new tide of grievances broke in upon the conſtitution, under the connivance of the imperial power; among which, none afforded ſo juſt a ground of complaint, as the venality and perfidy of advocates. A A. D. 46. remarkable caſe of a Roman knight, who had put an end to his own

[73] This Law is well known, and frequently taken notice of, by later hiſtorians; as will be ſeen preſently. We have no clear account of the immediate cauſe of its being enacted; neither does Livy ſay a word concerning it, though he has occaſion to ſpeak of Cincius himſelf, lib. 29. c. 20: and the only reference to it, that I have been able to find in that author, is put into the mouth of Cato the Cenſor, 34. 4: and this rather relates to another branch of it, not now in contemplation. It is alluded to in the ſame oblique manner by Cicero: "Coſs. Tudi- "tano et Cethego, cum quidem ille admo- "dum ſenex, ſuaſor Legis Cinciæ de donis "et muneribus fuit." De Sen. 4.

[74] "Nunc (ut ad rem meam redeam) L. "Papirius Pætus, vir bonus, amatorque "noſter, mihi libros eos, quos Servius "Claudius reliquit, donavit. Cum mihi, "per legem Cinciam licere capere, Cincius "amicus tuus diceret, libenter dixi, me accep- "turum, ſi attuliſſet." Cic. ad Att. 1. 20.

[75] Καὶ τὰς ἑκτορας αμισθι συναγορευειν, ἢ τετραπλασιον ὁσον αν λαβωσιν ἐκτινειν, ἐκιλευσε. Dio Caſſ. 54. 18.

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life, through grief and diſappointment, on finding himſelf betrayed by one of them, to whom he had given an enormous ſum of money, ſo alarmed the ſenators, that they inſtantly called out for a revival of the Cincian Law[76].

The arguments in ſupport of the motion chiefly turned upon the generous practice of former ages; upon the indignity offered to the firſt of all the liberal ſciences, by degrading it into a lucrative employment; and on the danger of making diſputes and enmities perpetual[77]. On the other hand, it was urged, that honor, without profit, was of little conſequence to thoſe, who had no pretenſions to the notice of poſterity; that the qualifications neceſſary to form an advocate required much ſtudy and attention, which obliged them to neglect their own family concerns; and, if the rewards of their induſtry were withheld, the profeſſion itſelf would be utterly diſregarded[78].

The reaſons were very plauſible on both ſides; and the reſult was, that the ſenate made a decree, with the mediation and conſent of the emperor, whereby permiſſion was given to receive fees, the quantity being limited to ten ſeſterces: and whoever ſhould

[76] "Cuncta legum et magiſtratuum munia in ſe trahens princeps, materiam prædandi patefecerat. Nec quidquam publicæ mercis tam venale fuit, quam advocatorum perfidia: adeo ut Samius, inſignis eques Romanus, quadringentis nummorum millibus Suilio datis, et cognitâ prævaricatione, ferro in domo ejus incubuerit. Igitur incipiente C. Silio Conſule deſignato,—conſurgunt Patres, legemque Cinciam flagitant; quâ cavetur antiquitus, *ne quis ob cauſam orandam pecuniam donumque accipiat.*" Tac. Ann. 11. 5.

[77] "Veterum oratorum exempla referens, qui famam in poſteros præmia eloquentiæ cogitaviſſent pulcherrima. Alioquin et bonarum artium principem ſordidis miniſteriis fœdari. . . . quod ſi in nullius mercedem negotia tueantur, pauciora fore: nunc inimicitias, accuſationes, odia, et injurias foveri." Id. ib. c. 6.

[78] "Neque tamen eloquentiam gratuito contingere: omitti curas familiares, ut quis ſe alienis negotiis intendat.—Nihil a quoquam expeti, niſi cujus fructus ante proviserit.—Sublatis ſtudiorum pretiis, etiam ſtudia peritura, ut minus decora." Id. ib. c. 7.

preſume

preſume to take more, incurred the penalties of the laws againſt bribery[79].

This permiſſion was renewed, in general terms, under Nero[80]. But, in the time of Trajan, an attempt was made to introduce a new regulation, upon the following occaſion. Pliny the younger, happening to be defendant in a cauſe, made his appearance according to the uſual form; but found the court adjourned by Nepos the Prætor, who had propoſed an *Edict*, to oblige all the litigants to take an oath, that they had neither advanced, promiſed, or given ſecurity for, any fees to advocates, previous to the commencement of the ſuit. All theſe, and many more, were included within the prohibitions of the decree of the ſenate under Claudius; but when the buſineſs was finiſhed, they were allowed to receive the reward ſettled by that law[81].

Though the lawyers thus condeſcended to make a trade of their eloquence, yet their pride would not permit them to depreciate the value or merit of their ſervices, by conſidering themſelves in the light of hirelings, and by diſgracing their gains with the mean and illiberal name of *wages*[82]; but they were pleaſed to dignify them by the more reſpectable title of *preſents*, or *gratuities*; ſuch as they might very honorably accept, though they could not legally de-

[79] "Hæc ita haud fruſtra dicta princeps "ratus, capiendis pecuniis poſuit modum, "uſque ad dena ſeſtertia, quæ egreſſi repe- "tundarum tenerentur." Id. ib.——The *Seſtertium* contained 1000 *Seſtertii*, worth about 8*l.* 1*s.* 5½*d.* ſterling; ſo that the fee aſcertained by this law would amount to about 80*l.* 14*s.* 7*d.* Vid. Ainſworth's Dict. Table of Roman Coins.

[80] "Litigatores pro patrociniis certam "juſtamque mercedem darent." Suet. in Ner. 17.

[81] This account is given by Pliny himſelf, in an epiſtle to his friend Rufus. "Cauſa dilationis, Nepos Prætor, qui legi- "bus quærit. Propoſuerat hoc edictum; "admonebat accuſatores, admonebat reos, "executurum ſe quæ SC. continerentur. "Suberat edicto SC. hoc. *Omnes, quicquid "negotii haberent, jurare prius quam agerent "jubebantur, nihil ſe ob advocationem cui- "quam dediſſe, promiſiſſe, caviſſe.* His enim "verbis, ac mille præterea, et vænire ad- "vocationes et emi vetabantur. Peractis "tamen negotiis, permittebantur pecuniam "duntaxat decem millium dare." Plin. Epiſt. 5. 21.

[82] "Mercedes." D. 50. 13. 1. pr.

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mand[83]. Theſe are the doctrines laid down by the famous Ulpian; and yet, notwithſtanding an affected diſavowal, he permits the judges to determine concerning the fees of advocates, in proportion to the importance of the ſuit, the abilities of the pleader, and the ſtyle of the court, provided he does not exceed the ſum ſpecified by law[84]; which, according to the liberality, or extravagance, of thoſe times, was an hundred "aurei" for each cauſe[85].

Whether the emoluments accruing to the profeſſion of the law made it more or leſs honorable in itſelf, is a matter of ſpeculation, which it might be thought unbecoming an humble member of the ſame order to determine. By the opportunities it afforded of accumulating wealth, it certainly gave great weight and conſequence to its profeſſors; and, upon one celebrated occaſion, when the imperial throne was put up to public auction, enabled an eminent practitioner to out-bid all his competitors[86]. It did not indeed derive any credit from this circumſtance, nor from the perſonal character of Julian himſelf; yet, while it continued to be exerciſed by men of rank, probity, and education, it was the terror of the wicked, the protection of the virtuous, and the main pillar of the conſtitution. As ſuch, the profeſſors were held in the higheſt eſteem; were admitted to the friendſhip of thoſe princes, who beſt underſtood the true principles of government[87]; and were indulged with many tranſcendent privileges and immunities.

But

[83] "Eſt quidem res ſanctiſſima, Civilis "Sapientia; ſed quæ *pretio nummario non ſit* "*æſtimanda nec deboneſtanda*, dum in judicio "honor petitur, qui in ingreſſu ſacramenti "efferri debuit: quædam enim tametſi "honeſtè accipiuntur, inhoneſtè tamen pe-"tuntur." D. 50. 13. 1. 5.

[84] In *honorariis* advocatorum ita verſari "judex debet: ut pro modo litis, proque "advocati facundia, et fori conſuetudine, et "judicii, in quo erat acturus, æſtimationem "adhibeat; dummodo licitum *honorarium* "quantitas non egrediatur." Ib. § 10.

[85] "Licita autem quantitas intelligitur "pro ſingulis cauſis, uſque ad centum au-"reos." Ib. § 12.—An "aureus" amounts to about 1 *l.* 4 *s.* 5 ½ *d.* ſterling. Ainſw. ut ſup.

[85] Vide p. 325.

[87] Thus, even in the times of degeneracy, we find them ſpoken of in terms of great veneration

But, as it was now converted into a lucrative employment, it too often excited a falſe ſpirit of emulation in the acquiſition of wealth; and, by falling in the way of mean, avaritious, and profligate perſons, became the ſource of infinite miſchiefs and oppreſſions to the innocent and peaceable ſubjects; which obliged ſucceeding princes to keep a watchful eye over their conduct, and to reſtrain them, as far as was poſſible, within the bounds of honeſty and decorum.

As many of theſe reſtrictive laws do no ſmall honor to the wiſdom and juſtice of their reſpective authors, and are, in fact, received into the freeſt conſtitutions of the modern world, it may not be improper to recall them to the notice of the learned reader. Among theſe are the following of Conſtantine, which prohibited advocates bargaining with their clients for a ſhare of the matter in controverſy[88]; and from drawing them into any other iniquitous bargains, whereby, in return for their aſſiſtance, they plundered them of the beſt part of their property. Theſe offences were puniſhed

neration by the emperors Leo and Anthemius, which Juſtinian has been pleaſed to preſerve: "Advocati qui dirimunt ambigua fata cauſarum, ſuæque defenſionis viribus in rebus ſæpe publicis ac privatis lapſa erigunt, fatigata reparant, non minus provident humano generi, quam ſi prœliis ac vulneribus patriam parenteſque ſalvarent. Nec enim ſolos noſtro imperio militare credimus illis, qui gladiis, clypeis, et thoracibus nituntur, ſed etiam advocatos: militant namque cauſarum patroni, qui glorioſæ vocis confiſi munimine, laborantium ſpem, vitam, et poſteros defendunt." C. 2. 7. 14. And again, "Laudabile, vitæque hominum neceſſarium, advocationis officium, maximeprincipalibus præmiis oportet remunerari." C. 2. 8. 4.

[88] This offence was called "*Pactum de quota litis*," and is thus deſcribed: "Si qui advocatorum exiſtimationi ſuæ immenſa atque illicita compendia prætuliſſe ſub nomine honorariorum ex ipſis negotiis, quæ tuenda ſuſceperint, emolumenta ſibi certæ partis cum gravi damno litigatoris et deprædatione poſcentes fuerint inventi: placuit ut omnes, qui in hujuſmodi ſævitate permanſerint, ab hac profeſſione penitus arceantur." C. 2. 6. 5. This was a law of Conſtantine: "Advocatos, qui conſceleratis depectionibus ſuæopis egentes ſpoliant atque denudant, non jure cauſæ, ſed fundorum, pecorum, et mancipiorum qualitate rationeque tractata, dum eorum præcipua poſcunt coacta ſibi pactione tranſcribi, ab honeſtorum cætu, judiciorumque conſpectu ſegregari præcipimus." C. Th. 2. 10. 1. et Goth. ibid. Theſe laws bear a near relation to thoſe of the Engliſh conſtitution againſt *Barretry*, *Maintenance*, and *Champerty*. Blackſt. Comm. 4. 10.

by

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by perpetual excluſion from all courts of juſtice; and by declaring them unworthy of being received into the ſociety of men of honor and character.

In conſequence of the great encouragement they received from the government, they were conſidered as a kind of honorable ſervants of the public, and lay under ſeveral correſpondent obligations. A party in ſuit, therefore, had a right to their aſſiſtance; and, if he could not otherwiſe obtain it, he was at liberty to apply to the judge, who was bound on his part to nominate a counſel, and oblige him to undertake the cauſe, under pain of ſuſpenſion from the exerciſe of his profeſſion, without the poſſibility of being ever reſtored to it [89]. Though this law takes no expreſs notice of thoſe whoſe poverty will not enable them to purchaſe aſſiſtance, it certainly muſt mean to include them: neither can ſuch an obligation ever be deemed a hardſhip by any practitioner that has the leaſt ſpark of liberality; whoſe ample gains by the generoſity of the opulent make it his duty to pay this tribute of charity to the neceſſities of the poor.

The ſtudy of eloquence was one of the moſt favorite purſuits of the antient Romans, and was generally preferred to the more ſolid and inſtructive ſcience of juriſprudence [90]; though they both often met in the ſame perſon, and, thus united, formed the moſt accompliſhed characters in the ſtate. But the greater the influence of this deluſive faculty over the minds of an audience, the greater the danger. The conſtruction of the Roman courts of judicature, even in

[89] "Si quis monitus a judice, ea excuſa-
"tione, quæ nequeat comprobari, cuicum-
"que parti patrocinium denegaverit, careat
"foro: ſciat etiam nunquam ſibi ad agendum
"copiam poſſe reſtitui." C. 2. 6. 7. This law ſeems to be the origin of a very frequent practice in the Eccleſiaſtical Court, where parties appearing in *Forma Pauperis*, and taking the uſual oath in ſuch caſes, have a right to demand an appointment both of an Advocate and Proctor, who are bound to undertake the cauſe without fee or reward. V. Ough. Ord. Jud. tit. 49.

[90] "Quis unquam dubitavit, quin in re-
"publica noſtra primas eloquentia tenuerit
"ſemper, urbanis pacatiſque rebus: ſecun-
"das, juris ſcientia?" Cic. Orat. 41.

the pureſt times of the conſtitution, was but ill calculated for the promotion of ſtrict and impartial juſtice: and there was always more room to play upon the paſſions of the judges, than to prevail over their reaſon. The faſcinating powers of a ſprightly imagination, and a voluble tongue, often carried all oppoſition before them, while formal argument failed of making the leaſt impreſſion. Even Cicero, who beſt underſtood the uſe of theſe arts, and practiſed them with the moſt unbounded ſucceſs, conſiders it as the worſt kind of bribery and corruption, to exert them in impoſing upon the conſcience of a judge; whoſe prudence will ever be more upon its guard againſt an open tender of money, than his mind againſt the ſpecious inſinuations of falſe oratory [91].

As polite literature and pure taſte gradually declined, in proportion as the government grew more oppreſſive and irregular, loquacity and prolixity took place of true eloquence and juſt argumentation [92]. The merit of a judicial harangue depended more upon the ſtrength of the advocate's lungs, and the effrontery of his countenance, than upon the ſolidity of his reaſons, or the goodneſs of his cauſe.

From hence the tranſition was very eaſy to petulance and ribaldry; which were now grown to ſuch an enormous exceſs, as to deſtroy that gravity and decency which are eſſential to every court of juſtice. To remedy this evil, the emperor Valentinian and his collegues publiſhed an edict, whereby advocates were expreſsly enjoined to abſtain from all abuſive and opprobrious language; which could only bring a diſgrace upon their own characters, without

[91] "Quarum artium ſcævitate, ut Tullius "adſeverat, nefas eſt religionem decipi ju- "dicantis. Ait enim: *Cumque nihil tam "incorruptum eſſe debeat in republica quam "ſuffragium, quam ſententia; non intelligo "cur qui ea pecunia corruperit, pœna dignus "ſit: qui eloquentia, laudem etiam ferat. "Mihi quidem hoc plus mali facere videtur, "qui oratione, quam qui pecunia judicem cor- "rumpit; quod pecunia corrumpere prudentem "nemo poteſt; dicendo poteſt.*" Amm. Marc. 30. 4.

[92] "Eloquentiam inanis quædam imita- "tur fluentia loquendi." Id. ib.

doing

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doing the leaſt ſervice to the cauſe of their clients [93]: a law, which points out, in the cleareſt manner poſſible, how much this once honorable profeſſion was declined from its primitive dignity.

In the ſtate of degeneracy to which it was now reduced, it was like the ſword in the hands of a ruffian, to be uſed only for the purpoſes of violence and oppreſſion. While the emperors themſelves preſided in the courts of juſtice, they kept theſe rapacious banditti in ſome degree of reſtraint and awe. Valens, in particular, a prince of a rigid and ſevere temper, was ſo fond of this part of his office, that his courtiers and dependents, dreading the effects of a power which was a perpetual check upon their iniquities, combined to draw off his attention from this important object; and, by artfully taking advantage of his pride and weakneſs, perſuaded him to deſiſt; under the idea of its being beneath the dignity of his ſtation to interfere in the trifling and unintereſting diſputes of private people. Thus was the door at once opened to every kind of corruption and rapine. The judges and advocates having but one intereſt in view, and finding the only obſtacle removed, readily concurred in paſſing ſuch ſentences as were moſt likely to ſatisfy their avaritious wiſhes; and ſoon raiſed themſelves to wealth and honors upon the plunder and ruin of the miſerable and unwary litigants [94].

The

[93] "Ante omnia autem univerſi Advocati ita præbeant patrocinium jurgantibus, "ut non ultra quam litium poſcit utilitas, "in licentiam conviciandi et maledicendi "temeritatem prorumpant: agant quod "cauſa deſiderat, temperent ſe ab injuriâ. "Nam ſi quis adeo procax fuerit, ut non "ratione, ſed probris putet eſſe certandum, "opinionis ſuæ imminutionem patietur; nec "enim conniventia commodanda eſt, ut "quiſquam negotio derelicto in adverſarii "ſui contumeliam aut palam pergat, aut "ſubdole." C. 2. 6. 6. 1. It might be well if this ſenſible and polite law were tranſcribed into the firſt page of every practical lawyer's common-place book in the world.

[94] This account is given by an author who was an eye-witneſs of the abuſes he ſo feelingly deſcribes. "In Eois partibus alto "externorum ſilentio, inteſtina pernicies au"gebatur per Valentis amicos et proximos, "apud quod honeſtate utilitas erat antiquior. "Navabatur enim opera diligens, ut homo "rigidus audire cupiens lites, a ſtudio judi"candi revocaretur, metu ne ita, ut Juliani "temporibus

The needy and inſatiable retainers of the law beſet the houſes of the wealthy, like dogs in ſearch of prey: they terrified and oppreſſed the widows and orphans; propagated the flames of diſſenſion between the deareſt and moſt affectionate friends; which, contrary to the nature of other evils, acquired ſtrength and ſtability by length of time, and entailed hatred and animoſity upon many ſucceeding generations. By the further aid of falſe eloquence and inſidious ſophiſtry, they perverted the natural courſe of juſtice; and exulted in the triumph which their own craft and chicanery had obtained over truth and equity "[94].

Procurators of the Revenues.

When the monarchical government had once gained a firm and permanent footing, it was ſoon followed by a diſtinction of intereſts between the prince and the ſtate, and, of conſequence, by a diſtinction of revenues. Such as were appropriated to the general expences of the public, were conſidered as the property of the community at large, and were depoſited in the *Treaſury*[95]: ſuch as were for the ſupport only of the imperial houſehold were the pri-

" temporibus defenſione innocentia reſpi-
" rante, frangeretur potentium tumor, aſ-
" ſumpta licentia latius ſolitus evagari. Ob
" hæc et ſimilia concordi conſenſu dehortan-
" tibus multis,—ille ad humiliandam celſitu-
" dinem poteſtatis negotiorum examina ſpec-
" tanda inſtituta eſſe arbitratus, ut mone-
" bat, abſtinuit penitus, laxavitque rapi-
" narum fores: quæ roborantur indies judi-
" cum advocatorumque pravitate ſentien-
" tium paria: qui tenuiorum negotia mili-
" taris rei rectoribus, vel intra palatium va-
" lidis venditantes, aut opes, aut honores
" quæſivere præclaros." Amm. Marc. 30. 4.

[95] " At nunc videre eſt per Eoos omnes
" tractus violenta et rapaciſſima genera ho-
" minum per fora omnia volitantium, et
" ſubſidentium divites domos, ut Spartanos
" canes aut Cretas, veſtigia ſagacius colli-
" gendo, ad ipſa cubilia pervenire cauſa-
" rum. In his primus eſt cætus eorum, qui
" ſeminando diverſa jurgia per vadimonia
" mille jactantur, viduarum poſtes et orbo-
" rum limina deterentes, et aut inter diſ-
" cordantes amicos aut propinquantes vel
" affines, ſi ſimultatum levia ſenſerint re-
" ceptacula, odia ſtruentes infeſta: in qui-
" bus ætatis progreſſu non ut aliorum vitia
" intepeſcunt, ſed magis magiſque robo-
" rantur: inter rapinas inſatiabiles inopes,
" ad capiendam verſutis orationibus judi-
" cum fidem, quorum nomen ex juſtitia
" natum eſt, ſicam ingenii deſtringentes."
Amm. Marc. 30. 4.

[96] " Ærarium," το δημοσιον.

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vate property of the emperor, and belonged to the *Exchequer*[97]. Theſe were adminiſtered by certain perſons called *Procurators*; whoſe duty it was to collect the tributes, taxes, forfeitures, with all other parts of the public income, and to account for them at their reſpective offices[98].

Officers of this kind were neceſſary, and well known, in every period of the Roman government. Under Auguſtus they received ſeveral new regulations: they were inveſted with a judicial power, and their decrees, as far as related to the purpoſes of their appointment, were as binding as thoſe of the Roman magiſtrates[99]. Theſe received further augmentation from Claudius, who allowed them the ſame force and validity as if they had proceeded immediately from himſelf, and cauſed them likewiſe to be confirmed by a decree of the Senate[100]. But as theſe powers, from their very nature, were liable to great and frequent abuſes, the humane prince Alexander Severus, when he nominated any perſons to that office, pub-

97 "Fiſcus," το βασιλειον ταμειον.——The Engliſh terms we have here uſed do not mark out the diſtinction ſo preciſely as could be wiſhed; but as they approach the neareſt to the meaning of the Latin or Greek words, and are the beſt accommodated to the ideas of an Engliſh reader, we ſhall hope to be excuſed the application of them. But the two offices are clearly diſtinguiſhed from each other in a variety of paſſages of the antient hiſtorians, of which the following may ſerve as examples: "At fortaſſe non eadem ſe-"veritate *Fiſcum* qua *Ærarium* cohibes; "imo tanto majore, quanto plus tibi licere "de tuo, quam de publico credis." Plin. Pan. ad Trâj. "Damnatorum bona in "*Fiſcum privatum* redigi vetuit, omni ſum-"ma in *Ærario Publico* recepta." Spart. in Hadr. 7.

98 From hence they are frequently ſtyled "Rationales," Accountants. Thus ſays a more modern Commentator: "Hoſce Pro-"curatores Cæſaris, et Fiſci eoſdem fuiſſe "non ambigo, qui et alio nomine *Ratio-"nales*, et Procuratores Patrimonii appel-"lantur." Alciatus de Magiſt.

99 "Divus Auguſtus apud equeſtres qui "Ægypto præſiderent lege agi, decretaque "eorum proinde haberi juſſerat, ac ſi ma-"giſtratus Romani conſtituiſſent: mox alias "per provincias, et in urbe pleraque con-"ceſſa ſunt, quæ olim a Prætoribus noſce-"bantur." Tac. Ann. 12. 60.

100 "Eodem anno ſæpius audita vox prin-"cipis, parem vim rerum habendam a pro-"curatoribus ſuis judicatarum, ac ſi ipſe "ſtatuiſſet. Ac ne fortuito prolapſus vi-"deretur, Senatus quoque conſulto cautum "plenius quam antea et uberius." Tac. Ann. 12. 60.

liſhed their names, inviting the people in general to declare whatever objections they knew to their characters[101]; and, conſidering the office itſelf, how uprightly ſoever it might be executed, only as a neceſſary evil, he limited the duration of it to one year[102].

Advocate of the Exchequer.

Till the time of Hadrian, the whole buſineſs of the revenue, and the queſtions of right ariſing thereupon, were ſolely veſted in the hands of the Procurators. But this wiſe prince, thinking them of too vaſt and complicated a nature to be truſted to a ſingle perſon, inſtituted a new officer, by the name of *Advocate of the Exchequer*[103], to be choſen from among thoſe who were of the firſt eminence in the profeſſion of the law. Thus Severus, afterwards emperor, was appointed by Antoninus Pius[104], and was ſucceeded in the ſame by the excellent Papinian[105]. The duty of this Imperial Advocate, or *Patron*, as he was ſometimes called, was to ſuperintend the accounts of the Procurators of the Revenues[106]. Neither was he permitted to undertake any cauſe againſt the crown[107], even if he had laid down the office, without the ſpecial permiſſion of the prince himſelf[108]. It was his buſineſs likewiſe to ſee that all eſcheats and forfeitures were regularly brought to account[109]; and, as he is ex-

[101] "Ubi aliquos voluiſſet—procuratores, "i. e. rationales ordinare, nomina eorum "proponebat, hortans populum, ut ſi quis "haberet criminis, probaret manifeſtis re-"bus." Æl. Lamp. in Alex. Sev. 45.

[102] "Rationales cito mutabat, ita ut ne-"mo niſi annum compleret; eoſque, ſi "boni eſſent, oderat, *malum neceſſarium* "vocans." Id. 46.

[103] "*Fiſci Advocatum* primus inſtituit." Æl. Spart. in Hadr. 20.

[104] "Severum ille ad *Fiſci advocationem* "delegerat ex formulario forenſi." Æl. Spart. in Geta, 2.

[105] Severo in advocatione fiſci ſucceſſit." Id. in Carac. 8.

[106] "Rationales, privatæ rei cauſis, vel "ſacris ærariis præſidentes, examen præ-"ſente Fiſci Advocato ſuſcipiant." C. 2. 9. 4.

[107] "Eos qui cauſam Fiſci egiſſent prohi-"bitum eſt adverſus fiſcum patrocinium "præſtare." C. 2. 9. 1.

[108] "Potes auctoribus noſtris adverſus fiſ-"cum quoque patrocinium exhibere priva-"tis; dum eam ſcilicet cauſam, quam tu, "cum Fiſci Advocatus fueras, forte trac-"taſti, ſuſcipere declines." C. 2. 9. 2.

[109] "Apertiſſimi juris eſt, ut quod ex cu-"juſque patrimonii ceciderit in caſum, et "legibus et recto juris ordine fiſci advocatis "agentibus vindicetur." C. 10. 11. 5.

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preſsly forbidden, under ſevere penalties, to conceal or embezzle any part of the fiſcal perquiſites; ſo is he reſtrained from abuſing his power, by inſtituting any groundleſs and vexatious ſuits againſt private ſubjects [110]. In conſequence of theſe ſervices, he was rewarded with a handſome ſalary from the emperor himſelf [111]. Beſide this, he was indulged with a variety of privileges, and other high marks of diſtinction, many of which were extended likewiſe to his children [112]. From the frequent mention of theſe officers in the plural number, it appears that there was one of them in every province at leaſt; and from the very great ſimilarity of their duties, ſtations, and characters, there can be no doubt that the very high and venerable offices of the Advocate, Attorney and Solicitor General to the princes of this country, are derived from a ſimilar origin.

Diviſion of the empire by Theodoſius.

Valentinian, Theodoſius, and moſt other princes of the Chriſtian perſuaſion, were great law-makers, and more particularly in religious matters; the effects of which will be mentioned on ſome future occaſion. An event of this importance loudly called for ſome material innovations in the antient juriſprudence, and rendered ſeveral new laws abſolutely neceſſary. But it is true likewiſe, that

[110] "Fiſci advocatus, pœnam metuens, "caveat ne fiſcalia commoda occultet: "neve, nullo negotio exiſtente, fiſci nomine privatis audeat calumnias commovere." C. Theod. 10. 15. 1.

[111] Thus ſays the emperor Juſtin: "Reſtituendæ ſunt clariſſimis eloquentiæ luminibus *ſexaginta auri libræ*, quas ſub imperio Zenonis divæ memoriæ pedaneis deputatas arbitris, nec non fidejuſſorum viros æſtimantibus, tamen auferendas credidit præparca poſterioris ſubtilitas principis, ut jam liberalitate noſtri numinis, viri clariſſimi *Fiſci Patroni*, præfatam auri ſummam ſine fraude annis ſingulis conſequantur, ab ampliſſima tua ſede pari lance in utrumque dividendam." C. 2. 8. 6. pr. This reſcript is directed to A. Marinus, the "Præfectus Prætorio."

[112] "Jubemus," ſays the emperor Anaſtaſius, "viros clariſſimos fiſci pro tempore "patronos fori celſitudinis, ſolemni die "feſtivitatis Kalendarum Januariarum ipſius "tantummodo anni, per quem tale peragunt officium, inter ſpectabiles ſacri noſtri "Conſiſtorii Comites divina noſtræ ſerenitatis manu puncti conſequi ſolatia. Et "poſtquam tale depoſuerint officium, ſi quidem filios ingenuos habeant, eos clariſſimorum Notariorum inſeri conſortio, "Tribunorum ſacras ſolitas epiſtolas ſine "quadam ſuffragii ſolutione percepturos." C. 2. 8. 4. 1 & 2.

among

among theſe ſome were ſuperfluous, and only increaſed the bulk, already much too large, without improving the conſtitution. The whole empire certainly owed many obligations to the valour, the wiſdom, and equity of Theodoſius; though it ſeverely ſuffered after his death, by his very imprudent partition of the dominions between his two ſons. The capital of the Weſt fell to the ſhare of Honorius, the younger; and though both the diviſions were oſtenſibly held in copartnerſhip, and governed by the ſame laws, yet the principles of ſeparation ſoon began to take too deep a root to be ever eradicated. Separate views and intereſts occupied the minds of the ſucceeding princes; and the unity of power and adminiſtration being thus irreparably deſtroyed, both were left an eaſier prey to the common enemy.

Arcadius. Arcadius, the elder ſon of Theodoſius, ſucceeded to the throne of Conſtantinople, which continued to exiſt for many centuries to come, in a gradual but incurable ſtate of decline, the ſhadow only of her parent Rome. With her ſhe likewiſe ſympathized in her diſtreſſes and convulſions; though ſhe had often the good fortune to be under the government of princes, by whoſe animated exertions ſhe was reſtored to a temporary ſplendor and proweſs. Of this number was Theodoſius the Second, the ſon of Arcadius, by whom he was diſtinguiſhed with the ſtyle and title of Auguſtus, ſoon after his birth; and, upon the death of his father, became ſole maſter of the Eaſtern Empire. By the attention of his wife and excellent guardian, Anthemius, he was educated in ſuch principles of virtue and policy, as would have made his reign perfectly happy both to himſelf and people, had not his too great eaſineſs of temper laid him open to the influence of falſe friends and favorites, who abuſed his confidence. This foible, which expoſed the liberties and properties of his innocent ſubjects to the oppreſſions of avaritious miniſters

Theodoſius II. A. D. 402. 408.

and

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and corrupt magiſtrates, is wholly without excuſe, and much depreciates the other meritorious parts of his character. It is generally allowed, however, that his heart was good; and, though his abilities were not of the moſt ſplendid ſort, yet that he was poſſeſſed of ſufficient judgment to underſtand the duties of his office, and to ſet on foot many improvements and reformations, which have reflected great honor upon his memory, and have been attended by many important benefits to poſterity.

Decay of learning.

Among the numerous defects and irregularities of the age of Theodoſius, none afforded a more copious ſubject of melancholy reflexion, than the confuſed ſtate, and rapid decay, of ſound and uſeful learning. In the more flouriſhing times of the imperial government, the Muſes were courted, and received under the peculiar protection of the beſt and wiſeſt princes. Hadrian, whoſe mind was much addicted to ſtudy, founded a ſchool or academy at Rome for the encouragement of polite literature[113]; to which all perſons that were inclined, ſome even of the emperors themſelves, reſorted for improvement, and to hear the lectures in poetry and rhetoric[114]. In compliment to Athens, the ancient ſeat of taſte and elegance, he called it the "Athenæum," and the traces of it are yet remaining in that venerable capital. Alexander Severus improved theſe inſtitutions by annexing ſalaries to the profeſſors of various ſciences, appointed the auditories, and allowed ſtipends to the children of poor people, to

[113] "Ælius Hadrianus, eloquio, togæque ſtudiis accommodatior——Græcorum more, ſeu Pompilii Numæ, cæremonias, leges, gymnaſia, doctoreſque curare occœpit, adeoque quidem, ut etiam ludum ingenuarum artium, quod Athenæum vocant, conſtitueret." Sex. Aur. Vict. de Cæſ. 14. To this the Greek hiſtorian likewiſe alludes in the following paſſage: Συναγαγων ἡμας εις το Αθηναιον καλουμενον απο της εν αυλῳ των παιδευομενων ασκησεως. Dio Caſſ. 20. 17.

[114] Thus Alexander Severus: "Ad Athenæum, audiendorum et Græcorum et Latinorum rhetorum vel poetarum cauſa, frequenter proceſſit." Æl. Lamp. in Alex. Sev. 35.

enable

enable them to profecute their ſtudies [115]. But the diſtractions of the empire, in the ſucceeding years of the third century, were fatal to the cauſe of letters, and threatened to involve them in barbariſm and oblivion. It muſt be confeſſed, however, that ſome of the Conſtantinopolitan princes ſhewed a proper ſenſe of the neceſſity of their revival and encouragement, and enacted many wiſe laws for that laudable purpoſe. Conſtantine himſelf ſet the example, by granting divers privileges and immunities to the profeſſors, as well as to their families; by protecting their perſons from inſults, and by inflicting ſevere puniſhments upon thoſe who interrupted them in the purſuit of their learned inquiries [116].

Valentinian, without neglecting the reſt, ſeems to have been more eſpecially attentive to the faculty of Phyſic [117], which, in every age, has been, more than all the other, expoſed to the intruſions of ignorant pretenders and arrogant empirics. Beſide this, he made ſeveral wiſe regulations concerning the ſtudents who came to Rome for their education. As theſe were collected from ſeveral diſtant quarters of a vaſt empire, he required that each of them ſhould bring with him a certificate, under the hands of the provincial judges (whoſe

[115] "Rhetoribus, grammaticis, medicis, aruſpicibus, mathematicis, mechanicis, architectis ſalaria inſtituit, et auditoria decrevit, et diſcipulos cum annonis pauperum filios, modo ingenuos, dari juſſit." Æl. Lamp. in Alex. Sev. 44.

[116] Of theſe, the following laws may ſerve as ſpecimens: "Medicos, grammaticos, et profeſſores alios literarum, immunes eſſe, cum rebus quas in civitatibus ſuis poſſident, præcipimus: et honoribus fungi: in jus etiam vocari eos, vel pati injuriam prohibemus, ita, ut ſi quis eos vexaverit, centum millia nummorum ærario inferat, a magiſtratibus, vel quinquenalibus exactus, ne ipſi hanc pœnam ſuſtineant." C. Theod. 13. 3. 1. And again, "Beneficia divorum retro principum confirmantes, medicos et profeſſores litterarum, uxores etiam et filios eorum ab omni functione et ab omnibus muneribus publicis vacare præcipimus, nec ad militiam comprehendi, neque hoſpites recipere, nec ullo fungi munere, *quo facilius liberalibus ſtudiis et memoratis artibus multos inſtituant.*" Ib. l. 3.

[117] "Archiatrorum privilegia, quæ his vetuſtis ſanctionibus adtributa ſunt inlibata volumus permanere, ac tenere perpetuam firmitatem." Ib. l. 15. pr.

leave

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leave they were firſt directed to obtain), of the reſpective places and times of their nativity, and of their perſonal characters. And further, that they might not waſte their time in uſeleſs purſuits, they were to declare the particular branch of learning to which they meant to apply [118]. Their lodgings in the city were to be notified to the proper officers of the police; whoſe duty it was to watch over their behaviour, to take care that they contracted no bad acquaintance; that they did not frequent public ſpectacles, nor unſeaſonable entertainments [119]. Such as offended in any of theſe particulars were ſubjected to corporal puniſhments, expulſion from the city, and baniſhment to their own homes [120]. Such as had been diligent were permitted to continue till they had completed their twentieth year, after which they likewiſe were obliged to return to their native habitations [121]. To prevent a negligent execution of theſe laws, the officer of that department was obliged to make inquiry every month, who the ſtudents were, and from whence they came, and to give orders for their removal, according to the diſtance of their ſeveral provinces;

[118] "Quicunque ad urbem diſcendi cupiditate veniunt, primitus ad magiſtrum cenſus, provincialium judicum, a quibus copia eſt danda veniundi, ejuſmodi literas proferant, ut *oppida hominum, et natales, et merita* expreſſa teneantur. Deinde, ut in primo ſtatim profiteantur introitu, *quibus potiſſimum ſtudiis operam navare proponant.*" C. Theod. 14. 9. 1. pr.

[119] "Tertio, ut *hoſpitia* eorum ſollicite Cenſualium norit officium, quo ei rei impertiant curam, quam ſe adſeruerint expetiſſe. Idem immineant Cenſuales, ut finguli eorum tales ſe in conventionibus præbeant, quales eſſe debent, qui turpem inhoneſtamque famam, et *conſociationes*, quas *proximas* putamus eſſe *criminibus*, æſtiment fugiendas: neve ſpectacula frequentius adeant, aut adpetant vulgo intempeſtiva convivia." Ib.

[120] "Quinetiam tribuimus poteſtatem, ut ſi quis de his non ita in urbe ſe geſſerit, quemadmodum liberalium rerum dignitas poſcat, publice verberibus affectus, ſtatimque navigio ſuperpoſitus, abjiciatur urbe, domumque redeat." Ib.

[121] "His ſane, qui ſedulo operam profeſſionibus navant, uſque ad viceſimum ætatis ſuæ annum Romæ liceat commorari: poſt id vero tempus, qui neglexerit ſponte remeari, ſolicitudine præfecturæ, etiam impurius, ad patriam revertatur." Ib.

ſuch

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ſuch only excepted as were employed in any corporate offices within the city [121].

Theſe laws were enforced, and theſe privileges renewed, with many additions, by ſeveral ſucceeding princes; all which gave a temporary check to the progreſs of ignorance, though they were far from reſtoring learning to its former purity and conſequence. It ſtill waited for a public adoption by the ſupreme power, and to be made a part of the national eſtabliſhment. For want of theſe advantages, the liberal arts were proſtituted to the hands of mean and illiterate pedagogues, in whom arrogance ſupplied the place of genius, and pedantry of erudition; who taught publicly in ſchools and cells opened by their own authority. Each of them, likewiſe, had a ſyſtem of inſtruction peculiar to himſelf; and waſted more time in perverting the underſtanding of his diſciples, and in exciting them to revile and malign their opponents, than in the calm and impartial inveſtigation of genuine ſcience.

Univerſity erected at Conſtantinople, A. D. 425.

To ſuppreſs theſe turbulent polemics, Theodoſius enacted a law to forbid them teaching in this public and promiſcuous manner, under pain of infamy, and expulſion from that town in which they exerciſed their profeſſion without proper licence [122]. This prohibition, however, did not extend to teaching in private houſes, provided their ſcholars conſiſted only of the members of the

[122] "Verum ne hæc perfunctorie fortaſſe curentur, præcelſa ſinceritas tua" (i. e. Olybrius, P. V. to whom this reſcript is directed) "officium cenſuale commoneat, ut per ſingulos menſes, *qui*, vel *unde veniant*, *quive ſint*, pro ratione temporis, ad Africam, vel ad cæteras provincias, remittendi, brevibus comprehendat, his duntaxat exceptis qui corporatorum ſunt oneribus adjuncti." C. Theod. 14. 9. 1.

[123] "Univerſos, qui, uſurpantes ſibi nomina *Magiſtrorum*, in publicis magiſtrationibus celluliſque collectos undique diſcipulos circumferre conſueverunt, ab oſtentatione vulgari præcipimus amoveri: ita ut ſi qui eorum, poſt emiſſos divinæ ſanctionis adfatus, quæ prohibemus atque damnamus iterum forte temptaverit, non ſolum ejus quam meretur infamiæ notam ſubeat, verum etiam pellendum ſe ex ipſa, ubi verſatur inlicite, urbe cognoſcat." Ib. 14. 9. 3.

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family [124]. In the room of theſe ſelf-created maſters, he erected a ſchool or auditory of his own, within the precincts of the palace, and ſupplied it with the ableſt profeſſors that could be found in grammar, oratory, languages, philoſophy, law, and whatever elſe came within the deſcription of polite literature; aſſigning particular apartments to each, that the ſcholars might not interrupt one another with their mixed and confuſed babbling [125]. The ſame regulations were afterwards revived and reinforced by Juſtinian [126].

Theſe imperfect, but curious, ſpecimens of ancient academical inſtitutions [127], have undoubtedly ſerved as the models of thoſe illuſtrious ſeminaries, which the pious and generous emulation of princes, prelates, and other noble and opulent friends of humanity and learning, have ſince erected in every country of Europe. And though the ſuperſtition of the times had frequently no inconſiderable ſhare in their eſtabliſhment [128]; yet the principles of public utility,

[124] "Illos vero, qui intra plurimorum "domus eadem exercere privatim ſtudia "conſueverunt, ſi ipſis tantummodo diſcipulis vacare maluerint, quos intra parietes domeſticos docent, nulla hujuſmodi "interminatione prohibemus." Cod. Th. 14. 9. 3.

[125] "Habeat igitur auditorium ſpecialiter noſtrum, in his primum quos Romanæ "eloquentiæ doctrina commendat, oratores "quidem tres numero, decem vero grammaticos: in his etiam, qui facundia Græcitatis pollere noſcuntur, quinque numero "ſint Sophiſtæ, et Grammatici æque decem. Et quoniam non his artibus tantum adoleſcentiam glorioſam optamus inſtitui, profundiores quoque ſcientiæ atque "doctrinæ memoratis magiſtris ſociamus "auctores. Unum igitur adjungi ceteris "volumus, qui philoſophiæ arcana rimetur: "duos quoque qui Juris et Legum formulas pandant. Ita ut unicuique loca ſpecialiter deputata aſſignari faciat Sublimitas Tua" (addreſſing himſelf to the Præfect of the City) "ne diſcipuli ſibi invicem "poſſint obſtrepere, vel magiſtri: neve linguarum confuſio permixta, vel vocum, "aures quorundam, aut mentes a ſtudio "literarum avertat." Ib. et 15. 1. 23. in which the ſituation and extent of theſe edifices are particularly deſcribed.

[126] C. Juſt. 11. 18. which is a literal tranſcript of the foregoing.

[127] They are to be found at large in C. Th. 13. 3. de Medicis et Profeſſoribus; and in 14. 19. de Studiis Liberalibus Urbis Romæ, et Conſtantinopolitanæ.

[128] Witneſs a well-known one in particular (to which, under Providence, the author owes the moſt dear and valuable bleſſings of his life), deſigned, among many other much more effectual purpoſes, to pray for *Departed Souls*, founded in the Univerſity of Oxford, by Henry Chichele, Archbiſhop of Canterbury, in the year 1437.

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and a ſincere concern for the intereſt of religion and learning, are in general ſo very predominant, and ſo warmly inculcated in their ſtatutes, that they may be applied, in their fulleſt force, to the completion of theſe beneficial views, without danger of hindrance or embarraſſment from the more inſignificant and uſeleſs parts of their reſpective conſtitutions; many of which are now not only become obſolete and impracticable, but inconſiſtent with the laws and maxims of the more ſenſible and improved legiſlatures.

But, in particular, it ſhould be ever remembered, to the eternal honor of the two great luminaries of this country, that the bright beams of divine and human knowledge, from thence for ever flowing, have contributed, among the moſt leading and efficient cauſes, to the confirmation of thoſe liberties, both religious and political, which have raiſed this government ſo much above the level of its rivals, and made it the envy of the univerſe. May the ſame uſeful and honorable views always continue to animate their counſels, and direct their diſcipline; and, as it is their duty, ſo may it ever be their ambition, to encourage and cultivate thoſe ſciences which the moſt conduce to delight the underſtandings, to mend the hearts, and to purify the morals, of the youth committed to their charge; and, on the moſt trying occaſions, to ſtand forth the faithful friends, and ſteady champions, of that excellent conſtitution, to which they owe the protection of their revenues and privileges.

Though Theodoſius, when he thus laid a foundation for the improvement of ſcience, had made the revival of juriſprudence a primary object, he had ſtill the mortification to perceive that it did not advance in proportion to the liberal rewards he had held out for its encouragement: that, notwithſtanding the cloſe application of many laborious ſtudents, few acquired any great depth of knowledge,

Theodoſian Code, A. D. 438.

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ledge, or made any ſhining figure in that line. Theſe obſervations led him to an inquiry into the cauſes of this general decline of a profeſſion, which he eſteemed of ſo high conſequence to the public welfare. This he ſoon found to ariſe from the immenſe heaps of juridical lore, the works of former princes and lawgivers; which had been inſenſibly accumulating for ſeveral paſt centuries, and now lay altogether in a kind of chaos, without the leaſt order, or diſcrimination of parts [129]. The materials, indeed, were rich, various, and inexhauſtible, abundantly ſufficient for a very extenſive and complete collection; but he was pleaſed to confine his choice entirely to the Conſtitutions of his Chriſtian predeceſſors.

Having, therefore, made theſe the only objects of his intended reformation, he appointed a committee of eight perſons, of the moſt diſtinguiſhed learning and abilities, whoſe buſineſs it ſhould be to reduce them into a regular and methodical compendium, to purge them of all unneceſſary prefaces and gloſſes, and to accommodate them, as much as poſſible, to general uſe [130]. To prevent all further confuſion, and doubts concerning the authority of

[129] The emperor declares his motives at large, in a Novel Conſtitution, which he publiſhed on purpoſe to confirm his Code: "Sæpe noſtra Clementia dubitavit, quæ "cauſa faceret, ut tantis propoſitis præmiis "quibus artes et ſtudia nutriuntur, tam "pauci, rarique extiterint, qui plena Juris "Civilis ſcientia ditarentur: et in tanto "lucubrationum triſti pallore, vix unus aut "alter receperit ſoliditatem perfectæ doc-"trinæ: quod nequaquam ulterius ſedula "ambiguitate tractetur, ſi copia immenſa "librorum, ſi actionum diverſitas, difficul-"taſque cauſarum animis noſtris occurrat, ſi "denique moles *Conſtitutionum Divalium*, "quæ velut ſuppreſſa demerſæ caliginis et "obſcuritatis vallo ſui notitiam humanis "ingeniis intercluſit." Nov. Theod. 1.

[130] "Verum egimus negotium temporis "noſtri, et diſcuſſis tenebris compendio "brevitatis, lumen legibus dedimus, elec-"tis viris nobilibus exploratæ fidei, famoſæ "doctrinæ, quibus delegata cauſa civilis "officii, purgata interpretatione, retró prin-"cipum ſcita vulgavimus: ne juriſperitorum "ulterius ſeveritate mentita, diſſimulata "ſcientia, velut ab ipſis adytis expectarentur "formidanda reſponſa: cum liquido pa-"teat, quo pondere donatio deferatur, qua "actione petatur hæreditas, quibus verbis "ſtipulatio colligetur, ut certum vel incer-"tum debitum ſit exigendum; quæ ſingula "prudentium detecta vigiliis, in apertum "lucemque deducta ſunt ſplendore numinis "noſtri radiante." Ib.

any former laws, he enacted, that, from the firſt day of January, in the year of its publication, this collection ſhould be uſed in all courts of juſtice, and ſhould be the only ſtandard for the future throughout the empire [131]. With the ſame view to uniformity, he directed that no edicts publiſhed by Valentinian, his nephew and ſon-in-law, who preſided in the Weſt, nor even any made by himſelf in the Eaſt, ſhould be of any force, unleſs inſerted in his Code; ſome few only excepted, that related to the body-guard of the prince, and the expences belonging to certain Palatine offices [132].

While we are ſpeaking of the preſent compilation, it would be great injuſtice to the character of this benevolent monarch, to paſs over the candor and modeſty with which he gives up all pretenſions to whatever merit may accrue from the internal perfection of the laws themſelves, and claims no other than that of brevity and perſpicuity; ſtill ſcrupulouſly preſerving the names and titles of the original authors at the head of each, as they ſtand in order under their reſpective titles [133]; which, while it preſerves their memory, contributes to illuſtrate the hiſtory of thoſe times.

As

[131] "Quamobrem deterſa nube voluminum, in quibus multorum nihil explicantium ætates attritæ ſunt, compendioſam Divalium Conſtitutionum ſcientiam ex D. Conſtantini temporibus roboramus, nulla poſt Kal. Jan. conceſſa licentia ad forum et quotidianas advocationes jus principale deferre, vel litis inſtrumenta componere, niſi ex his videlicet libris, qui in noſtri numinis vocabulum tranſierunt, et ſacris habentur in ſcriniis." Nov. Th. 1.

[132] "Hic adjicimus nullam conſtitutionem in poſterum, velut latam in partibus Occidentis, aliove in loco, ab invictiſſimo principe, filio noſtræ Clementiæ perpetuo Auguſto Valentiniano poſſe proferri, vel vim legis aliquam obtinere, niſi hoc idem divina pragmatica noſtris mentibus intimetur. Quod obſervare neceſſe eſt in his etiam, quæ per Orientem nobis auctoribus promulgantur: falſitatis nota damnandis, quæ ex tempore definito *Theodoſiano* non referuntur in *Codice*. Exceptis his, quæ habentur apud militum ſancta principis; vel, de titulis publicis expenſarum aliarumque rerum gratia, quæ in regiſtris diverſorum officiorum relata ſunt." Ib.

[133] "Quamquam nulli retro principum æternitas ſua detracta eſt, nullius latoris occidit nomen, imo lucis gratia mutati, claritudine conſultorum auguſta nobiſcum ſocietate junguntur. Manet igitur, manebitque pro perpetuo elimata gloria conditorum, nec *in noſtrum titulum* demigrabit, *niſi lux ſola brevitatis*. Et quamvis noſtris auſpiciis

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Novels of Theodoſius, A. D. 448.

As Theodoſius lived ſeveral years after he had completed his Code, he found it neceſſary to make ſeveral additions to it, which were called *Novel Conſtitutions*. Theſe were confirmed by his own authority in the Eaſt; and in the Weſt, by a ſpecial decree of Valentinian, publiſhed at Ravenna, whereby both diviſions of the empire are ordered to be governed by the ſame laws [134].

Ab A. D. 312 ad 438.

This Code includes a period of one hundred and twenty-ſeven years, and is diſtributed into ſixteen books. They conſiſt of imperial acts of every ſpecies and denomination; and though the general order in which they are arranged is very clear and intelligible, particular parts are liable to great exceptions. Many uſeful conſtitutions are omitted, which were afterwards preſerved by Juſtinian: ſome, from an affectation of brevity, are rendered obſcure; too many are inſerted, of the ſame tenor; and as many more that contradict and deſtroy each other's force. But the laws which have been the moſt ſeverely cenſured, are thoſe which permit the uſe of the ſtupid, indelicate, and impious ceremonies of Paganiſm.

A. D. 319.

It is true, that theſe were enacted by Conſtantine when that religion was the moſt generally profeſſed throughout the empire; and conſequently ſome condeſcenſion to the prejudices of the times was neceſſary to be ſhewn by a prudent and cautious prince. Though, when Chriſtianity had once gained a permanent and univerſal eſtabliſhment, it ſhould ſeem highly incongruous to perpetuate theſe laws, which were diametrically oppoſite to its intereſt; as there is certainly an eſſential difference between a charitable toleration of erroneous opinions, and a legal authority given to a falſe and diabo-

" auſpiciis totius operis inſtauratio deberetur, " attamen magis imperatorium, magiſque " credimus glorioſum, ſi, fugata invidia, " *perennitatis jure memoria remaneret auctorum. Nobis ad fructum bonæ conſcientiæ* " *abundeque ſufficit, revelatis legibus, inventa* " *majorum obſcuritatis injuria vindicaſſe.*" Nov. Theod. 1.

[134] " Ut ſicuti uterque orbis individuis " ordinationibus regitur, iiſdem quoque le- " gibus temperetur," Nov. Val. inter Theod. 1. 13.

lical

lical worſhip, which the Divine maſter and finiſher of our faith came into the world on purpoſe to deſtroy.

Such are the reflexions of ſome very able and learned commentators of modern times. And yet, when theſe laws come to be examined with an impartial judgment, they will be found to err in both extremes; as they inflict no leſs a puniſhment than that of flames upon the blind and deluded prieſts and miniſters of ſuperſtition, who ſhould preſume to continue or cultivate their antient friendſhip with the members of the Chriſtian church; but, at the ſame time, indulge them with a full liberty of erecting altars and temples to their Heathen deities, for the uſe of all ſuch as are diſpoſed to reſort to them [135]. A more even hand might ſurely have been kept, between the mercileſs perſecution of miſtaken zealots, and the unlimited permiſſion of their pernicious doctrines or practices.

The Theodoſian Code, being the firſt work of its kind which ever came out under the ſanction of imperial authority, was received with profound reſpect throughout the whole Roman dominions. It was even adopted by the moſt declared enemies of the Roman name, and incorporated in their reſpective municipal ſyſtems; as will be ſeen more particularly on a ſubſequent occaſion [136].

Theodoſius

[135] Theſe laws are as follow: "Nullus "aruſpex limen alterius, accedat, nec ob "alteram cauſam; ſed hujuſmodi homi- "num, quamvis vetus, amicitia repellatur: "*concremando illo Haruſpice*, qui ad domum "alienam acceſſerit: et illo qui eum ſua- "ſionibus vel præmiis evocaverit, poſt ad- "emptionem bonorum, in inſulam detru- "dendo. Superſtitioni enim ſuæ ſervire "cupientes, *poterunt publice ritum proprium* "*exercere.*" And again, "Haruſpices et "Sacerdotes, et eos, qui huic ritui adſolent "miniſtrare, ad privatam domum prohibe- "mus accedere, vel ſub prætextu amicitiæ "limen alterius ingredi, pœna contra eos "propoſita, ſi contempſerint legem: qui "vero id vobis exiſtimatis conducere, *adite* "*aras publicas atque delubra, et conſuetu-* "*dinis veſtræ celebrate ſolennia:* nec enim "prohibemus præteritæ uſurpationis officia "libera luce tractari." C. Theod. 9. 16. 1 & 2.

[136] This work is ſtill extant, though not quite entire; and the moſt celebrated edition was printed at Paris. A. D. 1665, in ſix volumes in folio, with a Comment by Jac. Gothofred, an eminent French advocate, which almoſt overwhelms the text; but the very learned and critical obſervations therein contained make ample amends for their prolixity.

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Theodoſius himſelf died, in the flower of his age, not long after he had given his own laws their final confirmation; and his collegue Valentinian the Third ſurvived him but a few years.

A. D. 450.
A. D. 455.

In the mean while, the Weſtern Empire ſuffered every extreme of miſery that war and rapine could inflict upon it. Honorius, for greater ſecurity, had removed the principal ſeat of government to Ravenna, a city upon the Adriatic, where it exiſted for a few ages longer, in a languiſhing ſtate, under a turbulent ſucceſſion of upſtarts and uſurpers, who ſtill called themſelves Roman Emperors; but who had no more lawful pretenſions to the imperial title, than they had ſtrength or abilities to maintain it. The capital itſelf, left and abandoned by its natural maſters, was ſurpriſed and plundered by Alaric the Goth; and, after many ineffectual ſtruggles with the other rude and warlike nations of the North, became a prey, with the reſt of its valuable appendages, to Odoacer king of the Heruli; who extinguiſhed the Roman power in Italy, under the weak reign of Romulus, or Momilius, Auguſtus, more uſually known in hiſtory by the ſurname of Auguſtulus.

A. D. 410.

A. D. 476.

Thus was this proud paragon of fortune totally deprived of that dominion which ſhe had once exerciſed with unbounded ſway over the greateſt part of the univerſe: her territories were cantoned out among rovers and barbarians; and ſhe herſelf forced to receive the yoke, and adopt the manners, of a ſavage and illiterate people, whom ſhe had formerly regarded with the moſt ſovereign contempt.

lixity. We gladly acknowledge a variety of obligations to this work, eſpecially to the *Prolegomena*, which are chiefly of the hiſtorical kind; and to which the curious reader is referred, for further ſatisfaction upon the ſubjects above treated of.——The other authors we have uſed on this occaſion are, Howel's Hiſt. Mun. p^{t}. 2. c. 3. § 1—5. Hein. Hiſt. Jur. Civ. § 377—382. Id. Præm. ad Ant. Rom. § 22, 23, 24. Giann. 2. 7.

CHAP.

CHAP. II.

General ſtate of the Laws after Theodoſius II.—*Reformation of them by Juſtinian.—Inſtitutes.—Digeſt, or Pandects.—Code.—Novels.* —"Corpus Juris Civilis."—*Character of Juſtinian.*

CHAP. II.

AFTER the late fatal ſeverance of the Weſtern regions, Conſtantinople became the legal repreſentative of Rome; and ſucceeded to the title and dignity of Capital of the *Roman* Empire, as it was ſtill affectedly called, though no part of the original territories then adhered to it. However, the ſame form and principles of government continued to predominate; till, having languiſhed for near ten centuries longer, under a ſlow but incurable decay, and worn out by a ſeries of diſaſters, it finally expired under the mercileſs ſwords of rapacious infidels. A. D. 1453.

Almoſt every variety, that could diſtinguiſh one character from another, was to be found among the ſucceſſors of Theodoſius the Second in the Eaſt; though, how much ſoever they differed from each other in point of perſonal qualifications, or political abilities, they were all equally fond of exerciſing their legiſlative functions. This, indeed, was no more than what the daily exigencies of ſuch a mixed and numerous people demanded. But, having no uniform national plan in view, the laws thus enacted, however proper or excellent in themſelves, were applicable only to particular caſes and perſons; conſequently, they contributed more to increaſe the maſs of imperial conſtitutions, than to refine or elucidate the general ſyſtem of juriſprudence. In fact, they embarraſſed it with new

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difficulties, and multiplied thoſe contradictions, which had already too much obſtructed the progreſs of that neceſſary and uſeful ſcience.

Juſtinian, A. D. 527.

To this ſtate of confuſion were they reduced when Juſtinian aſcended the imperial throne; and, being diſperſed, with the other writings of the antient magiſtrates and profeſſors, among no leſs than two hundred thouſand volumes, or rolls, were now grown almoſt uſeleſs, and were loſt in their own immenſity. Juſtinian, at this time in his full vigor both of body and mind, conceived vaſt deſigns for the reſtoration of the empire to its original ſplendor, as well as for the improvement of its conſtitution. Of the many former attempts to methodize the laws, none had ever yet been carried into execution, ſuch detached collections only excepted as have been already mentioned. But theſe, being all very partial and confined, both in reſpect to their ſubject-matter, and the periods wherein they were enacted, fell far ſhort of that noble and comprehenſive plan which Juſtinian had projected in his own mind. This was, to take a minute and careful ſurvey of this indigeſted maſs of diſcordant materials; to ſeparate and arrange its parts, and from thence to form one regular and well-connected body of laws, to be the future ſtandard of juſtice for the whole empire.

His directions for the reviſal of the Imperial Conſtitutions.

A ſcheme ſo full of conſequences to the future welfare of the ſtate requiring the utmoſt circumſpection, he entruſted the management of it to a committee of ten perſons of the moſt approved learning and abilities, who had borne ſome of the higheſt offices about the court[a]; inſtructing them to begin their work with a careful reviſal of the three foregoing Codes, and of all the other imperial conſtitutions of his predeceſſors, whether Pagan or Chriſtian, as well before as ſince the time of the ſecond

[a] Their names and titles are ſet forth at length in Præf. 1. ad C. §. 1.

Theodoſius.

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Theodoſius [2]. From hence they were to extract a ſeries of plain and conciſe laws; omitting the former ſuperfluous preambles, as well as all other matters that carried a too ſimilar or too oppoſite a meaning; but with liberty either to extend or limit their ſenſe, or to alter them, in whatever manner they ſhould think moſt likely to facilitate their future uſe and operation. This done, they were to arrange them under ſeparate titles; that, by thus bringing whatever related to the ſame ſubject under one point of view, their import might be the better underſtood [3]. Several directions were likewiſe given concerning the order in which they were to ſtand according to their dates, and the Conſuls in whoſe times they were publiſhed; with ſome other leſs material particulars, which relate more to their internal form, than to their binding authority.

Code.

The whole, thus compiled, was called the *Code* bearing his own name; from whence alone, for the quicker diſpatch of buſineſs, the imperial conſtitutions were to be quoted on all future judicial deciſions [4].

It

[2] This deſign is beſt explained in his own words, as they ſtand in his addreſs to the Senate upon the ſame occaſion: "Hæc, quæ "neceſſario corrigenda eſſe multis retro "principibus viſa ſunt, interea tamen nullus eorum ad effectum ducere auſus eſt: "in præſenti rebus donare communibus "auxilio Dei Omnipotentis cenſuimus, et "prolixitatem litium amputare: multitudine quidem conſtitutionum, quæ tribus "Codicibus Gregoriano, Hermogeniano, "atque Theodoſiano continebantur, illarum "etiam quæ poſt eoſdem Codices a Theodoſio divinæ recordationis, aliiſque poſt "eum retro principibus, et a noſtra etiam "clementia poſitæ ſunt, reſecanda: uno "autem codice ſub felici noſtri nominis vocabulo componendo, in quem colligi tam "memoratorum trium codicum, quam novellas poſt eos poſitas conſtitutiones oportet." Præf. 1. ad Cod. pr.

[3] "Quibus ſpecialiter permiſimus (reſecatis tam ſupervacuis quantum ad legum "ſoliditatem pertinet, præfationibus, quam "ſimilibus, et contrariis, præterquam ſi juris alia diviſione adjuventur, illis etiam "quæ in deſuetudinem abierunt) certas et "brevi ſermone conſcriptas ex iiſdem tribus "codicibus, et novellis conſtitutionibus leges componere, et congruis titulis ſubdere, adjicientes quidem et detrahentes, "imo et mutantes verba earum, ubi hoc "rei commoditas exigeret: colligentes vero "in unam ſanctionem, quæ in variis conſtitutionibus diſperſa ſunt, et ſenſum earum "clariorem efficientes." Ib. § 2.

[4] "Hæc igitur ad veſtram notitiam ferre "properavimus, ut ſciatis quanta nos diu-

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It was divided into twelve books, and each book into ſeveral titles, with other ſmaller ſubdiviſions; and includes all the imperial laws that were thought worth preſerving, from Hadrian to Juſtinian. Being thus finiſhed, in the third year of his reign, it received his public and ſolemn confirmation, by a reſcript directed to Menna, the Prætorian Præfect [5].

A. D. 529.

Digeſt, or Pandect.

Juſtinian appears to have conſidered the Code only as an introduction to a work of much greater extent and utility, which was to go back to the very beginning of the Roman government itſelf, and to comprehend every branch of the antient juriſprudence, which has been the ſubject of our former inquiries. The chief of theſe were the *Reſponſes* of the Lawyers [6], and the *Edicts* of the Magiſtrates [7]; which, with the comments of ſubſequent annotators, were ſcattered about in two thouſand volumes, and were ſubdivided into more than three hundred thouſand verſes or ſentences [8]. The emperor himſelf ſeems alarmed and ſtaggered at the difficulty of the undertaking; but, with the Divine favor, determines to perſevere to its final completion [9].

To

" turna ſuper rerum communi utilitate cura " ſollicitet, ſtudentes certas et indubitatas, " et in unum codicem collectas eſſe de cætero " conſtitutiones: ut ex eo tantummodo ſub " felici noſtro nomine nuncupando *Codice*, " recitatio conſtitutionum in omnibus ad " citiores litium deciſiones fiat judiciis." Præf. § 3.

[5] This conſtitutes the ſecond Preface to the Code, and has for its title " De Juſti- " nianeo Codice confirmando." It explains the whole of the Emperor's deſign in undertaking this uſeful work, and is therefore very worthy the reader's more particular peruſal. V. etiam Grav. O. J. 1. 131. Hein. Hiſt. J. C. § 390. Gian. 3. 3. cum multis aliis.

[6] " Reſponſa Prudentum." v. b. 2. c. 4.

[7] " Jus Honorarium." b. 2. c. 6.

[8] " Sed cum omnia percontabamur, a " præfato viro excelſo ſuggeſtum duo pœne " millia librorum eſſe conſcripta, et plus " quam trecenties decem millia verſuum a " veteribus effuſa." C. 1. 17. 2. 1.

[9] " Hoc opere conſummato, in uno vo- " lumine, noſtro nomine præfulgente, co- " adunato: cum ex paucis et tenuioribus " relevati ad ſummam et pleniſſimam juris " emendationem pervenire properaremus, " et omnem Romanam ſanctionem et colli- " gere, et emendare, et tot auctorum diſ- " perſa volumina uno codice indita oſten- " dere, quod nemo alius neque ſperare, " neque

To this end, he iſſued a mandate to Tribonian, whom he calls the *Quæſtor of his Palace*[10], committing the whole to his direction; and empowering him to call to his aſſiſtance any number of the moſt ſkilful advocates, ſtateſmen, and politicians, that he ſhould approve[11]. Their firſt buſineſs was, to peruſe the writings of all the great profeſſors, whom former princes had entruſted with the power of interpreting the law; and from thence to ſelect the moſt material parts, rejecting all ſuperfluities and contradictions, ſo that one principle might ſuffice for one ſubject[12]. In their determinations upon queſtions either of expediency or equity, they were not to ſuffer their judgments to be biaſſed by the multitude of authorities; as the ſingle opinion of an inferior writer might, in ſome inſtances, be preferable to that of a majority: ſo that if any doctrine could be extracted from writings of leſs general merit, that was capable of throwing a better light upon a paſſage even of Papinian himſelf, it ſhould be inſerted without heſitation[13]. They were likewiſe indulged with

" neque optare auſus eſt: Res quidem no-
" bis difficillima, imo magis impoſſibilis
" videbatur; ſed manibus ad cœlum erectis,
" et æterno auxilio invocato, eam quoque
" curam noſtris repoſuimus animis, Deo
" freti, qui et res penitus deſperatas donare,
" et conſummare ſuæ virtutis magnitudine
" poteſt." Præf. 1. D. ad Tribon. § 2.

[10] This great officer was next in rank to the *Prætorian Præfect*; and he ſeems to have been the confidential miniſter of the crown in all matters of law. V. the authorities relating to this point, collected by Howel, Hiſt. Mun. p^t. 2. c. 1. ſec. 2. § 59, 60.

[11] " Ad tuæ ſinceritatis optimum reſpexi-
" mus miniſterium: tibique primo et hoc
" opus commiſimus, ingenii tui documen-
" tis, ex noſtri Codicis ordinatione accep-
" tis: et juſſimus, quos probaveris tam ex
" facundiſſimis anteceſſoribus, quam ex viris
" diſertiſſimis togatis fori ampliſſimæ ſedis,
" ad ſociandum laborem eligere. His ita-
" que collectis, et in noſtrum palatium in-
" troductis, nobiſque tuo teſtimonio placi-
" tis, totam rem faciendam permiſimus:
" ita tamen, ut tui vigilantiſſimi animi gu-
" bernatione res omnis celebretur." Præf. 1. ad Trib. § 3.

[12] " Jubemus igitur vobis antiquorum
" prudentium, quibus auctoritatem conſcri-
" bendarum interpretandarumque legum
" ſacratiſſimi principes præbuerunt, libros
" ad jus Romanum pertinentes et legere,
" et elimare: ut ex his omnis materia col-
" ligatur, nulla, ſecundum quod poſſibile
" eſt, neque ſimilitudine, neque diſcordia
" derelicta; ſed ex his hoc colligi, quod
" unum pro omnibus ſufficiat." Ib. § 4.

[13] " Sed neque ex multitudine auctorum,
" quod melius et æquius eſt judicatote:
" cum poſſit unius forſitan et deterioris ſen-
" tentia

BOOK IV.

with the ſame liberty, as before in the Code, to admit, reject, or alter whatever they thought moſt conducive to the perfection of the work; and what they ſo adopted was to be received as law, without being liable to be impeached or invalidated, in conſequence of any difference from the original [12].

Theſe collections were to be diſtributed into fifty books, and theſe again into certain titles, in imitation either of the *Code*, or of the *Perpetual Edict*, as the compilers ſhould judge moſt proper. They were to contain the whole of the antient law, for near fourteen hundred years paſt; and the opinions of every author therein preſerved were to be treated with an equal degree of reſpect, in thoſe branches of the ſcience in which each was particularly known to excel; none of them being alike excellent in all [13]. Upon the whole,

" tentia et multas et majores in aliqua " parte ſuperare. Et ideo ea quæ antea in " notis Æmilii Papiniani ex Ulpiano et " Paulo, necnon Marciano adſcripta ſunt, " quæ antea nullam vim obtinebant propter " honorem ſplendidiſſimi Papiniani, non " ſtatim reſpuere; ſed ſi quid ex his ad " repletionem ſummi ingenii Papiniani la- " borum, vel interpretationem neceſſariam " eſſe perſpexeritis, et hoc ponere legis vi- " cem obtinens non moremini." Præf. 1. ad Trib. § 6.

[14] " Sed et hoc ſtudioſum vobis eſſe vo- " lumus; ut ſi quid in veteribus non bene " poſitum libris inveniatis, vel aliquod ſu- " perfluum, vel minus perfectum; ſuper- " vacua longitudine ſemota, et quod im- " perfectum eſt, repleatis, et omne opus " moderatum et quam pulcherrimum oſten- " datis. Hoc etiam nihilominus obſervan- " do; ut ſi aliquid in veteribus legibus vel " conſtitutionibus, quas antiqui in ſuis li- " bris impoſuerunt, non recte ſcriptum in- " veniatis, et hoc reformetis, et ordini mo- " derato tradatis: ut hoc videatur eſſe ve- " rum, et optimum, et quaſi ab initio " ſcriptum, quod a vobis electum, et ibi " poſitum fuerit. Et nemo ex compara- " tione veteris voluminis quaſi vitioſam " ſcripturam arguere audeat." Ib. § 7.

[13] " Cumque hæc materia ſumma noſtri " numinis liberalitate collecta fuerit, opor- " tet eam pulcherrimo opere extruere, et " quaſi proprium eſt ſanctiſſimum templum " juſtitiæ conſecrare: et in libros quinqua- " ginta, et certos titulos totum jus digerere, " tam ſecundum noſtri conſtitutionem Co- " dicis, quam Edicti Perpetui imitationem, " prout hoc vobis commodius eſſe patuerit: " ut nihil extra memoratam conſummatio- " nem poſſit eſſe derelictum: ſed his quin- " quaginta libris totum jus antiquum per " milleſimum et quadringenteſimum annum " confuſum, et a nobis purgatum, quaſi " quodam muro vallatum nihil extra ſe " habeat; omnibus auctoribus juris æqua " dignitate pollentibus, et nemini quadam " prærogativa ſervanda: quia non omnes " in omnia, ſed certi per certa vel meliores, " vel deteriores inveniuntur." Ib. § 5.

no laws were to be revived which had been aboliſhed by long diſuſe; but thoſe only were to prevail which had been the moſt conſtantly practiſed in courts of juſtice, or approved by the uniform reception of the metropolis; according to the maxim of Salvius Julian, who lays it down as a principle, that all other cities ſhall follow the cuſtom of Rome; by which the emperor *now* means, not only the primitive city, but that likewiſe in which he preſides[16].

This learned body of men obeyed the imperial mandate with the greateſt alacrity; and, though allowed ten years, a time ſhort enough for ſo extenſive a work, contrived to perform it in about three; fancying, perhaps, there was more merit in expedition than in accuracy. But, whether it was owing to this cauſe, or to the want of attention in the compilers, it was certainly not executed with that preciſion and exactneſs which the emperor, from his inſtructions, appears to have intended; and which, if ſtrictly purſued, would have made it the pride of human wiſdom and policy. Notwithſtanding his expreſs directions to them, to avoid all contradictory laws, and to preſerve ſuch a general concord among them, that they ſhould all lead to one conſequence[17], nothing is more common, than to find the judgment ſuſpended by doctrines of a quite oppoſite tenor; upon the ſtrength of which, an acute advocate may eaſily maintain either ſide of a controverted queſtion with equal confidence.

[16] "Sed et ſi quæ leges in veteribus libris poſitæ, jam in deſuetudinem abierunt, nullo modo vobis eaſdem ponere permittimus: cum hæc tantummodo obtinere volumus, quæ vel judiciorum frequentiſſimus ordo exercuit, vel longa conſuetudo hujus almæ urbis comprobavit; ſecundum Salvii Juliani ſcripturam, quæ indicat debere omnes civitates conſuetudinem Romæ ſequi, quæ caput eſt orbis terrarum, non ipſam alias civitates. Romam autem intelligendam eſſe non ſolum veterem, ſed etiam regiam noſtram, quæ Deo propitio cum melioribus condita eſt auguriis." Præf. 1. ad Trib. § 10.

[17] "Nulla itaque in omnibus prædicti codicis membris *Antinomia* —— aliquem ſibi vindicet locum; ſed ſit una concordia, una conſequentia, adverſario nemine conſtituto." Ib. § 8.

It

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It would be a taſk no leſs irkſome than unprofitable, to proceed upon a more minute inquiry into the various errors which a penetrating reader may have diſcovered in the courſe of ſuch a complicated performance; moſt of which are laid indiſcriminately to the charge of Tribonian, and called, after him, *Tribonianiſms*; from a preſumption, that, becauſe he had the chief conduct of the work, he ought to be reſponſible for every one. Among theſe, he has been ſeverely cenſured by ſome modern Civilians, for interpolating the deciſions of the antient lawyers with his own opinions and refinements. But in this he acted in ſtrict conformity to his inſtructions, which were, to preſerve the names of the original authors, out of reſpect to their characters; but either to extend, retrench, or alter their opinions, ſo as to accommodate them, in the eaſieſt manner, to the temper of the age, and to preſerve their conſiſtency with the plan and ſpirit of the preſent government [18]. The blame, therefore, if any, is imputable to him only under whoſe ſanction theſe variations were made.

The emperor, in giving directions for preſerving the names of the authors of the ſeveral laws at the head of each, either was not

[18] "Tanta autem a nobis antiquitati habita eſt reverentia, ut nomina prudentum taciturnitati tradere nullo patiamur modo: ſed unuſquiſque eorum qui auctor legis fuit, noſtris Digeſtis inſcriptus eſt: hoc tantummodo a nobis effecto, ut ſi quid in legibus eorum vel ſupervacuum, vel imperfectum, vel minus idoneum viſum eſt: vel adjectionem, vel deminutionem neceſſariam accipiat, et reſtrictiſſimis tradatur regulis, et in multis ſimilibus vel contrariis quod rectius habere apparebat, hoc pro aliis omnibus poſitum eſt, unaque omnibus auctoritate indulta: ut quicquid ibi ſcriptum eſt, hoc noſtrum appareat, et ex noſtra voluntate compoſitum: nemine audente comparare ea quæ antiquitas habebat, et quæ noſtra auctoritas introduxit: quia multa et maxima ſunt, quæ propter utilitatem rerum tranſformata ſunt: adeo ut etſi principalis conſtitutio fuerat in veteribus libris relata, neque ei pepercimus: ſed et hoc corrigendum eſſe putavimus, et in melius reſtaurandum: nominibus etenim veteribus relictis, quicquid legum veritati decorum et neceſſarium fuerat, hoc noſtris emendationibus ſervavimus: et propter hanc cauſam, et ſi quid inter eos dubitabatur, hoc jam in tutiſſimam pervenit quietem, nullo titubante relicto." C. 1. 17. 2. 10.

ſufficiently

CHAP. II.

ſufficiently explicit himſelf, or was not thoroughly underſtood by the compilers. For though, in purſuance of his orders to look up to the fountain-head, they have actually preſerved the doctrines of thoſe eminent ſages of the profeſſion who flouriſhed under the *old* and *middle* juriſprudence, they have too often ſuppreſſed their names; ſeldom taking notice of any other than thoſe of the *new*, which begins with Hadrian [19]. This omiſſion might poſſibly have ariſen from a notion, that, as the writers of the later ages had carefully gleaned the moſt valuable treaſures of their predeceſſors, their own characters alone would be ſufficient to give them the force of law, without being obliged to go ſo far back into the receſſes of antiquity, in ſearch of the real authors, whoſe names are only quoted, as it were, by accident. From this circumſtance, it is often difficult to diſcover, whether the perſons thus introduced at the head of each law are ſpeaking in their own, or in borrowed language: and from hence many obſcurities in the Civil Law will for ever remain inexplicable, for want of knowing from what ſources theſe principles were drawn, and for what times and occaſions they were enacted [20].

Thus was this elaborate work completed, and uſhered into the world under two ſolemn inſtruments of confirmation, addreſſed jointly to A. D. 533.

[19] This diſtinction of the ſeveral ages of the Roman juriſprudence into "*Antiqua*, "*Media*, et *Nova*," is founded upon the authority of Juſtinian himſelf, I. 3. 2. 3. The firſt of theſe was antecedent to the law of the Twelve Tables; the ſecond includes all the time from thence to the commencement of Hadrian's reign; and the laſt, from thence to Juſtinian. The beſt authors, however, are much divided in their opinions upon this ſubject, which, after all, is of very little conſequence; and therefore, without dwelling any further upon it, we ſhall refer the reader, for further ſatisfaction, to the Comments of *Vinnius* and *Heineccius* upon the preſent paſſage; and likewiſe to Dr. *Taylor's Elements of Civil Law*, p. 15. where he has collected all the ſeveral conjectures of former writers, but adopts that of Juſtinian, as the beſt founded.

[20] Whatever could be done towards clearing up theſe difficulties, is to be found in the work already mentioned, of Jac. Labittus, intitled, "Index Legum;" the great utility of which is fully explained by Gian. 3. 3.

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the Senate and People [21]. The name by which it is moſt uſually known is the *Digeſt*, from the order into which it is reduced; but, from the comprehenſiveneſs of its plan, it is likewiſe called the *Pandects* [22]; and, with all its irregularities and imperfections, is the beſt of its kind that has ever yet appeared among the moſt refined and cultivated nations [23]. The ſubject-matter of it includes every eſſential rule that concerns the rights of private property, the regular adminiſtration of juſtice, and whatever elſe can promote the true intereſts, or ſecure the tranquillity, of civil ſociety. Its excellence in theſe particulars has been ſo univerſally acknowledged, that the ableſt lawyers and politicians of the freeſt and moſt poliſhed countries of Europe have not only honored it with a cloſe imitation, but have even enriched their own defective ſyſtems of juriſprudence with its doctrines; and gloried in a plagiariſm which has done ſo much credit to their judgment, and benefit to their conſtitutions.

The incomparable principles of reaſon and equity, which ſo plentifully abound through every page, owe no inconſiderable part of their origin to thoſe virtuous patriots who lived in the pureſt times of the republic, and exerciſed the profeſſion of the law with the moſt diſintereſted views; looking for no other rewards than the bleſſings of the poor, and the grateful attachment of thoſe whom they had reſcued from oppreſſion. Many other of theſe learned ſages flouriſhed in the polite reign of Auguſtus, who was himſelf a bountiful encourager of literary purſuits: conſequently, the language of their laws is peculiarly diſtinguiſhed by a conciſe and nervous elegance; and (allowing for ſome technical terms, indiſpenſable in every ſcience) equal, in point of purity, to the ſtyle of the moſt approved

[21] V. Præf. 2 & 3. ad D.

[22] Παν δεκτα "a verbo" παν δεχω.

[23] Hein. Hiſt. J. C. 399, 400. wherein the greateſt part of the objections are clearly confuted.

writers

writers of that admired and claſſical age. The reſt that followed, and whoſe names are chiefly uſed in the courſe of this work, were men of the higheſt ſtations in the government, of the moſt improved underſtandings, and the moſt unblemiſhed characters; who often boldly withſtood the tyrannical efforts of imperial power; and, by their courage and perſeverance, gave the ſtamp of authority and perpetuity to thoſe humane and liberal maxims, which, with the reſt, have ſo greatly enriched this highly valuable collection [24].

CHAP. II.

While the Digeſt was preparing for publication, the emperor gave orders to Tribonian, in conjunction with two other eminent profeſſors [25], Dorotheus and Theophilus, to collect all the fundamental principles of the antient law into a ſmall manual, containing four books; which he diſtinguiſhed by the title of *Inſtitutes*, in imitation of the Inſtitutions of Caius, mentioned upon a former occaſion [26]. Theſe he deſigned principally for the uſe of novitiates; who, by making themſelves firſt perfectly acquainted with the elements, might, with greater eaſe and certainty, proceed to an inveſtigation of the more deep and abſtruſe parts of the ſcience [27]. It

Inſtitutes.

was

[24] The compilers, without any intelligible reaſon, have divided the Digeſt into ſeven parts (Præf. 2. ad D.), perhaps out of ſome ſuperſtitious veneration for that number. Alciat. Parerg. Jur. lib. 11. c. 11. The commentators of later ages have invented a ſtill more barbarous diſtinction, into *Digeſtum Vetus*, *Infortiatum* (a word not to be found in the claſſical language of Rome, and totally void of any idea), *et Novum*. Such as wiſh for further information upon theſe unintereſting particulars, may find it in Hoppii Præcog. Jur. c. 2. § 16, 17. et Gian. 3. 3. 2.

[25] "Anteceſſores."

[26] P. 388.

[27] "Sed cum proſpeximus quod ad portandam tantæ ſapientiæ molem non ſunt "idonei homines rudes, et qui in primis "legum veſtibulis ſtantes intrare ad arcana "eorum properant: et aliam mediocrem "emendationem præparandam eſſe cenſui"mus, ut ſub ea colorati, et quaſi primi"tiis omnium imbuti, poſſint ad penetralia "eorum intrare, et formam legum pul"cherrimam non conniventibus oculis acci"pere. Et ideo Triboniano, viro excelſo, "qui ad totius operis gubernationem elec"tus eſt, necnon Theophilo et Dorotheo, "viris illuſtribus, et facundiſſimis anteceſ"ſoribus accerſitis, mandavimus, quatenus "libris quos veteres compoſuerunt, qui pri"ma legum argumenta continebant, et "Inſtitutiones vocabantur, ſeparatim collec"tis, quicquid ex his utile et aptiſſimum "et undique ſit elimatum, et rebus quæ in "præſenti

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was publiſhed about a month before the Digeſt, by way of an introduction, though they both received their legal confirmation at the ſame time[28].

This little work is ſo truly admirable, both for its method and conciſeneſs, as well as for the elegance of its compoſition, that it has been imitated by almoſt every nation in Europe, that hath ever made any attempt to reduce its own laws to a regular and ſcientific form. It has paſſed through a vaſt variety of editions, with commentaries ſuited to the particular conſtitutions of thoſe countries where they were publiſhed: and whoever will take the pains to compare it with the antient writers on the Laws of England, from the twelfth century downwards, will find, that the very beſt of them lie under the greateſt obligation to this work of Juſtinian, not barely for their models alone, but alſo for the chief part of their rules and principles, and, in ſome inſtances, where the ſubject requires, for whole titles almoſt literally tranſcribed from thence; how much ſoever their more modern ſucceſſors in the ſame honorable profeſſion may affect an ignorance or contempt of thoſe fertile ſources of juridical learning[29].

Codex Repetitæ Prælectionis.

A. D. 534.

In the ſame interval, Juſtinian having obſerved, that many queſtions had occurred, and controverſies ariſen, which had never received any determination, either by the antient imperial conſtitutions, or by his own Code, he ordered that work to be reviſed, and

"præſenti ævo in uſu vertuntur, conſentaneum invenitur, hoc et capere ſtudeant, et quatuor libris reponere, et totius eruditionis prima fundamenta atque elementa ponere: quibus juvenes ſuffulti poſſint graviora et perfectiora legum ſcita ſuſtentare." Præf. 2. ad D. § 11.

[28] C. 1. 17. 2. 12. Grav. O. J. 1. 133. Hein. Hiſt. J. C. § 393. Gian. 3. 3. 2.

[29] Of the many uſeful editions of this work, ſome of the beſt are thoſe by Hoppius, Vinnius, and Heineccius; and, which is of more value than all the reſt in this country in particular, one publiſhed in 1761, with an accurate Engliſh tranſlation of the text, and notes occaſionally explaining the differences of the Civil Law with the Law of England, by Geo. Harris, LL. D. whoſe acute genius, correct judgment, and inſinuating eloquence, render him, at this day, one of the moſt ſhining ornaments of his profeſſion.

republiſhed,

republiſhed, with ſeveral corrections and alterations, together with fifty new deciſions upon ſome other doubtful points; ſtill preſerving the ſame form, order, books, and titles, as in the former [30]. This was called the *Codex Repetitæ Prælectionis*, and is the ſame that is now extant; the firſt edition having been purpoſely ſuppreſſed on account of its incorrectneſs, ſo that no remains of it have ever reached poſterity. CHAP. II.

Though Juſtinian had thus completed this uſeful deſign of reforming the antient laws, the buſineſs of legiſlation continued always to be his favorite object. He ſeized every opportunity, which a long reign gave him, of enlarging his original plan, by the addition of ſuch laws as the exigencies of the ſucceeding times demanded. Theſe, he eaſily foreſaw, would gradually increaſe to ſuch a bulk, as to furniſh materials for another collection; which, therefore, he intended to make, and to publiſh them all together, as a ſupplement to the former, under the name of *Novels*, or *New Conſtitutions* [31]. But theſe, though enacted on purpoſe to ſupply the omiſſions, and correct the faults, of the preceding publications, want much of that brevity, dignity, and ſolidity, which ſo remarkably diſtinguiſh the juridical compoſitions of the antients. Their ſenſe is too often either obſcured by barbariſms, or loſt in a labyrinth of unne- Novels.

[30] Thus ſays the Emperor to the Senate: "Cum novellæ noſtræ tam deciſiones, quam "conſtitutiones, quæ poſt noſtri Codicis "confectionem latæ ſunt, extra corpus "ejuſdem Codicis divagabantur, et noſtram "providentiam, noſtrumque conſilium ex"igere videbantur: quippe cum earum "quædam ex emerſis poſtea factis aliqua "meliore conſilio permutationem vel emen"dationem deſiderabant: neceſſarium nobis "viſum eſt, —— eaſdem conſtitutiones noſ"tras decerpere, et in ſingula diſcreta ca"pitula, ad perfectarum conſtitutionum ſo"liditatem competentibus ſupponere titulis, "et prioribus conſtitutionibus eas aggre"gare." Conſt. de Emend. Cod. § 2. V. et. Hein. Hiſt. J. C. § 395, 396. et Gian. 3. 3. 3. Grav. O. J. 1. 134. Hopp. Præc. Jur. c. 2. § 18—26.

[31] "Hoc etenim nemini dubium eſt, quin "ſi quid in poſterum melius inveniatur, et "ad conſtitutionem neceſſario ſit redigen"dum, hoc a nobis et conſtituatur, et in "*aliam congregationem* reſeratur: quæ *No*"*vellarum* nomine conſtitutionum ſignifi"cetur." De Emend. Cod. § 4.

ceſſary

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ceſſary phraſes. Many of them, however, are of acknowledged merit and utility: witneſs, in particular, the hundred and eighteenth Novel, to which the Engliſh legiſlature will be for ever obliged, for ſome of the moſt uſeful principles of that famous and excellent ſtatute for the diſtribution of inteſtates' effects[32].

Theſe laws were originally compoſed in Greek, a very few only excepted, that being the vernacular language of the Eaſtern empire. But, whether they were collected together by Juſtinian himſelf, according to his own propoſition, is a matter of controverſy among the learned; though the moſt general opinion is, that this part of the plan was undertaken by ſome anonymous hands after his death; to which was added a very minute verbal tranſlation, from

A. D. 570.

whence they obtained the name of *Authentics*. But, in the mean while, Julian, an eminent profeſſor in the academy at Conſtantinople under the reign of Juſtin the Second, publiſhed an abridgment of them, with an elegant Latin verſion of his own, chiefly calculated for private uſe; as the former alone carried the authority of law[33].

Corpus Juris Civilis.

The four principal parts above mentioned, collectively taken, conſtitute the *Body* of the *Civil Law*[34], to be generally received and obeyed through every part of the Roman dominions; and to be conſidered either as *promulged* or *compoſed* by Juſtinian[35]. Under the firſt deſcription are included all the Novels, and thoſe Conſti-

[32] 22 & 23 Car. 2. c. 10. This ſtatute was obtained at the inſtance of Sir Leoline Jenkins, a Civilian of great eminence in that reign, and Judge of the Prerogative Court, upon very ſubſtantial reaſons, which may be ſeen at large in his Life, by the learned Mr. Serjeant Wynne, vol. 2. p. 695. And for further obſervations on the utility of this excellent law, V. Caſe of Carter v. Crawley, Sir T. Raymond, 496. The Novel itſelf is likewiſe printed at length, by way of Appendix to Dr. Harris's Inſtitutes.

[33] Hein. Hiſt. Jur. Civ. § 397, 398. Grav. O. J. 1. 135. Hopp. Præc. Jur. c. 2. § 27—30. Gian. 3. 3. 4.

[34] "Corpus Juris Civilis." One of the beſt editions of this work is that publiſhed by the Elzevirs at Amſterdam, 1663, with the notes of Gothofred and Van Leewen.

[35] "Omnes populi legibus tam a nobis "*promulgatis* quam *compoſitis* reguntur." Proem. ad I. § 1.

tutione

tutions of the Code that were expreſsly enacted by himſelf; under the latter, the Inſtitutes, Digeſt, and remainder of the Code, that were already framed to his hands, but were only reduced to better order, and republiſhed under his auſpices.

Upon an impartial review of this princely collection, which contains the quinteſſence of whatever is uſeful and excellent among the accumulated productions of fourteen centuries, inſtead of enviouſly dwelling upon its defects, or complaining of its magnitude, we ſhould rather admire the judgment and perſeverance of thoſe learned perſonages who had courage to undertake this more than Herculean labor; and reduced the whole into ſo reaſonable and moderate a compaſs, as that in which it is now extant.

A multiplicity of laws is a pregnant proof of the attention of the legiſlative power to the welfare of the community. But, as theſe laws cannot, at once, be accommodated to that innumerable variety of caſes which the unforeſeen combinations of human affairs daily produce, they muſt frequently require freſh additions and amendments, which, in a courſe of years, will create much uncertainty and confuſion, as well as impede the progreſs of public juſtice. Theſe inconveniencies are indeed patiently borne, for the ſake of the concomitant benefits; but can only be remedied by the interpoſition of the ſupreme authority, as had often been attempted by former Roman princes, though never with any general effect, till the reign of Juſtinian: a circumſtance, which places him in a diſtinguiſhed and exalted point of view, above his moſt heroic and victorious predeceſſors; and holds him out an example, highly worthy of imitation, to every ſovereign of the more improved and intelligent conſtitutions of the modern world.

Perhaps there is no country in which the neceſſity of a ſimilar reformation is more apparent, than our own; where, for the laſt

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century eſpecially, the laws have multiplied beyond any proportion to the preceding times. But, while we reflect, with the warmeſt gratitude, upon theſe daily exertions of the legiſlature, whereby our liberties and properties are ſo effectually protected; may we not be permitted to expreſs a wiſh, that, in ſome future days of public repoſe and leiſure, another Engliſh Juſtinian may ariſe[36]; under whoſe benign influence and encouragement a new and lucid form may be given to that ſhapeleſs maſs of juridical materials, which often ſtaggers the reſolution of the moſt induſtrious ſtudent, with too juſt an apprehenſion of never arriving at the end of his toils.

Even the famous *Abridgement* (as it is called[37]) of the judicial deciſions upon theſe laws, conſtitutes a little library of itſelf; and, ſince its firſt publication, loudly calls for many additions to carry on the deſign of the learned and public-ſpirited author, who devoted the fruits of a long and laborious life to this uſeful purpoſe. As this munificent inſtitution ſtill continues to reflect the higheſt honor upon its founder, ſo was it peculiarly happy in the perſon of its Proto-profeſſor; who, on the very inſtant of its creation, was ready at hand to bring it to full maturity and reputation. Who, by an uncommon aſſemblage of intellectual talents, could reconcile the moſt fertile genius with the moſt indefatigable induſtry. Who, with equal facility, could ſport with the muſes, and think with the philoſopher. Whoſe *Commentaries on the Laws of England* will be a more laſting and honorable monument, than the moſt ſtudied and delicate touches of painting or ſculpture can conſecrate to his memory; and which, among its other excellencies, will be an impregnable barrier to the Engliſh language, againſt the daily inroads of pedantry and affectation.

[36] Edward I. was long ago diſtinguiſhed by that honorable title.

[37] In 23 volumes in folio.

Having

CHAP. II.

Character of Juſtinian.

Having thus brought down the hiſtory of the Roman Law to its final reformation, it may be worth while to take a ſhort view of the character of this great prince, to whom the world will lie under a perpetual obligation for theſe ineſtimable treaſures. This character, which he had himſelf carefully erected upon the moſt ſolid baſis of wiſdom, juſtice, and munificence, received its due ſhare of applauſe from ſuch impartial judges as beſt knew how to appreciate its merits, though it often ſuffered the rude attacks of abuſe and obloquy; a common tribute, which the moſt virtuous and patriotic ſovereigns, in all ages and countries, have ever paid to envy, diſcontent, and faction. But, towards the beginning of the ſeventeenth century, a very black cloud was ſuddenly ſpred over it, in conſequence of a manuſcript, which the malicious induſtry of a Popiſh bigot had brought out of ſome obſcure corner of the Vatican, and introduced to the world with all the parade and confidence of authentic hiſtory.

Though this extraordinary compoſition had neither beginning nor ending, name nor date, to determine by whom or when it was written, it was boldly fathered upon Procopius[38]; a perſon, whoſe diſtinguiſhed learning and abilities had recommended him to the favor of the emperors Anaſtaſius and Juſtin, by the latter of whom he was appointed aſſeſſor, or counſellor, to the famous Beliſarius. By the advantage of this ſituation, wherein he continued for a long term of years, he was enabled to write a very exact and elegant hiſtory of thoſe times, which he publiſhed, much to the ſatisfaction

[38] The title of this work is, "Ανεκδοτα, "ſeu Arcana Hiſtoria." It was firſt publiſhed at Lyons, in 1623, by one Nicolaus Alemannus, with a very ingenious and artful Preface, and a variety of learned and entertaining annotations, all well calculated to impoſe upon a negligent or prejudiced reader; and, as ſuch, it gained conſiderable credit with many, eſpecially the zealous friends of the Holy See. It is likewiſe reprinted, in a very pompous and magnificent manner, among the other *Byzantine Hiſtorians*, at Paris, in 1663.

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of Juſtinian; and, without any apparent adulation or bitterneſs, had related what he either then knew, or believed to be fact.

It is aſſerted indeed by ſome later authors, that, finding himſelf afterwards deceived in certain particulars, which he had repreſented too much in favor of that emperor, he intended to correct theſe miſtakes; and it is probable that he did actually publiſh ſomething to that effect. But it is very obſervable, that the author, who gives a catalogue of the works of Procopius, calls it by a name implying only a *retractation*[39] of ſome former errors, and of a much more confined ſignification than the title given to the book in queſtion; which contains a great variety of detached ſtories, bearing little or no relation to what Procopius had ſaid in his former hiſtory, and conſequently could not be the thing he then profeſſed to publiſh.

This circumſtance entirely deſtroys the proof of the identity of the author, upon which the editor ſo much relies, and which he endeavours to eſtabliſh upon the credit of Suidas; who mentions, that a book, under the name of *Anecdotes*, was written by Procopius, full of ſevere reflexions upon Juſtinian and his empreſs Theodora, as well as upon Beliſarius and his wife[40]. From hence, and likewiſe from divers extracts made by Suidas, which correſpond with the preſent work, he concludes it muſt neceſſarily be the ſame that was written by Procopius.

But the age in which this lexicographer lived is wholly unknown; and it is certain, that his original text has been ſo much interpolated and corrupted in later times, that men of the beſt learn-

[39] Το δε τιταρτον ΑΝΤΙΡΡΗΣΙΣ εστιν, ων προς Ιυστινιανον ειρηκε δι' επαινον ποιων, και ως αν τις παλινῳδια των αυτῳ μη καλως ειρημενων. Niceph. Call. lib. 17. c. 10. edit. Par. 1630.

[40] Προκοπιος—γεγονεν επι των χρονων Ιυστινιανυ του βασιλεως, υπογραφευς χρηματισας Βελισαριυ, και ακολυθος καὶα παιλας τυς συμβαιλας πολεμυς τε και πραξεις, και ὑπ' αυλυ συγγραφεισας. εγραψε και ετερον βιβλιον, τα καλυμενα ΑΝΕΚΔΟΤΑ, των αυλων πραξεων· ὡς ειναι αμφοτερα τα βιβλια θ. το βιβλιον Προκοπιυ το καλυμενον ΑΝΕΚΔΟΤΑ, ψογυς και κωμῳδιας Ιυστινιανυ του βασιλεως περιεχει, και της αυτυ γυναικος, Θεωδωρας. αλλα μην και αυτυ Βελισαριυ, και της γαμετης αυτυ. Suidas in voce, Προκοπιος. edit. Lud. Kuſteri, Cantab. 1705.

ing

ing entertain great doubts of its authority[41]. The utmoſt, therefore, that can be collected from theſe premiſes, is, that a book of this kind was publiſhed; but it cannot go ſo far as to aſcertain the real author. The moſt general conjecture is, that he muſt have been ſome obſcure and contemptible ſcribbler, who, diſguſted with Juſtinian on account of certain religious diſputes, which then raged with the moſt unſeemly violence, could think of no better mode of revenge, than to fall foul upon his character.

In fact, as it has been very properly obſerved by a judicious writer of the laſt century, "whoever was the real author, it does "almoſt as much prejudice to the reputation of Procopius, as it "hurts the memory of the emperor[42]." The verboſe and affected ſtyle, with the deſultory and incoherent arrangement of facts, are the reverſe of every thing that can be included within the deſcription of judgment or ſcholarſhip. The charges brought againſt Juſtinian, of vice, oppreſſion, and cruelty, are ſo numerous and exaggerated, that, if true, ſo far from enjoying his crown and life, as he actually did, for near forty years, a people, who had but the loweſt degree of feeling for their own comfort, would not have ſuffered ſuch a tyrant to have lived an hour. And, what amounts to the moſt unqueſtionable ſelf-refutation of all others, the tales with which it abounds are ſo monſtrous, incredible, and unnatural, that they would be a diſgrace to the moſt fabulous legends, in the darkeſt periods of Popiſh ignorance and ſuperſtition[43]. Neither are they ſtronger

[41] V. Præf. Lud. Kuſt. 2d edit. ut ſup.

[42] Howell's Hiſt. Mundi, p^t. 3. c. 2. ſect. 3. § 67.

[43] Among theſe ſtories, ſome of the moſt curious are, That Juſtinian was begotten upon his mother by a dæmon:—That his head was formed of an aerial ſubſtance, which often ſeemed to evaporate, ſo that he was ſeen to walk about without any upon his ſhoulders:—That a holy Monk, once coming to preſent a petition to him, on approaching the throne, inſtead of an emperor, ſaw it filled with a frightful ſpectre:—That the empreſs Theodora had frequently carnal communications with infernal ſpirits; with others of equal authority, which the reader, if he thinks it worth his while, may find at length in the work itſelf, c. 12.

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proofs of the wickedneſs, than of the folly or inſanity, both of the author himſelf, and of thoſe who have ſo earneſtly endeavoured to impoſe him upon the public, as an object worthy of attention.

Procopius was a man of the world, univerſally eſteemed for his knowledge and probity; who had enjoyed the ſame high and honorable ſtation, under no leſs than three ſucceſſive emperors, for a long courſe of years; and under one of the beſt and greateſt generals that Rome, or, perhaps, any other nation, could ever boaſt of; by all of whom he was reſpected, cheriſhed, and rewarded. The ſpirit, dignity, and correctneſs, with which the hiſtory of his own times is written, plainly ſhew, that he ſcorned either to flatter or fear. He publiſhed it at the earneſt encouragement of an able and diſcerning prince, who could receive honeſt praiſe and honeſt cenſure with the ſame complacence and equanimity.

If, amidſt the complicated variety of facts, which the vaſt extent of his ſubject required him to relate, he had been guilty of any material errors, it did him honor to confeſs and retract them upon conviction. But what he had aſſerted as a man of honor, he would recant as a man of honor. He would have been aſhamed to oppoſe unmerited praiſe with baſe calumny, or to rectify miſtakes by improbable falſehoods, or incredible fables. Could he have condeſcended to proſtitute his pen in ſo vile and prepoſterous a work as that now imputed to him, he muſt, in the firſt inſtance, have been a moſt abject ſycophant; in the other, a moſt ſlanderous aſſaſſin. But, as hiſtory will juſtify no ſuch ſuppoſitions, this worthy and learned hiſtorian ſtands fairly acquitted, in the eyes of all perſons of moderation and conſcience. The real author, whoever he be, from his mere inſignificance and obſcurity, eſcapes that infamy and deteſtation which his memory well deſerves; and the whole diſgrace falls upon the editor and his abettors; who, with abilities and eru-

dition equal to a more honorable employment, reſcued this deſpicable libel out of its congenial darkneſs, for the avowed purpoſe of blaſting the good name of this accompliſhed and diſcerning prince, who ſo wiſely checked the infant pride, and humbled the riſing arrogance, of the fictitious ſucceſſors of St. Peter.

Politically ſpeaking, the deſign was artful and well-timed. Theſe aſpiring pontiffs, who, for ſeveral paſt ages, had held the whole Chriſtian world in the moſt humiliating ſtate of thraldom, under the impious claim to a divine commiſſion, had the mortification to perceive that many rich and potent kingdoms had ſhaken off their fetters. They found themſelves engaged with the temporal princes of Europe, whoſe underſtandings were more enlightened than formerly with the beams of ſound learning; who knew how to oppoſe authority with authority; who could trace this uſurped power up to its original ſources, and ſay, "that from the beginning it was not "ſo;" who thoſe were, whoſe ſuperſtitious timidity gave new life to their ſpiritual inſolence; and who had the courage to reſtrain and puniſh it. They could ſay—this was Juſtinian—this was he who, in virtue of his own ſupremacy, ſummoned the fifth œcumenical council at Conſtantinople, and ſent Vigilius, that turbulent Biſhop of Rome, into exile; from whence he ſuffered him not to return, till his Infallibility condeſcended to ſet his hand to the deciſions of that aſſembly, to which he at firſt had refuſed his aſſent [44].

No effort was to be left untried to weaken the force of ſo dangerous a precedent. When, therefore, ſome fortunate accident, as it moſt probably was, brought to light this muſty fragment, imperfect as it was, it ſupplied the quiver of ſlander with plenty of new ſhafts againſt the common enemy; and, furniſhing no evidence whereby to authenticate itſelf, it was eaſily in the power of an in-

[44] Moſh. Hiſt. Eccl. p^t. 2. c. 3. § 11.

genious

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genious and artful commentator to aſcribe it to whomſoever he pleaſed, and to place it in thoſe hands where it would do the moſt execution.

Thus did it fall to the lot of Procopius. But whoever will take the trouble to peruſe the dedication and preface of the editor, and conſider the bitterneſs and acrimony with which they are penned, will inſtantly perceive, that the ſuppoſed inſults upon the dignity of the Holy See were the grand ſprings of their reſentment; that theſe were the tones the moſt in uniſon with the maſter-ſtrings of their paſſions; and that malice and revenge could have been the only motives for impoſing ſuch traſh upon the public, which deſerved no better fate than what it had already in part ſuffered, to be food for worms. Upon the whole, it is hoped that what has been here advanced, to reſcue a reſpectable author from the infamy of being the parent of ſuch ſpurious offspring, will be admitted to ſtand upon much more ſubſtantial foundations than mere uncertain conjecture[45].

It may poſſibly be expected, that ſome notice ſhould be likewiſe taken of Juſtinian's ingratitude and cruel treatment of the great Beliſarius, whereby he is reported to have deprived him of his eye-ſight, and to have expoſed him, in his old age, to every extreme of poverty and contempt. This calumny was firſt broached by a later author, named Crinitus, of little note or reputation; but, being of a nature well calculated to affect the paſſions, has received by far the greateſt degree of its credit from the pathetic pencils of a Vandyke and a Salvator Roſa. This, however, is too groſs a fable al-

[45] For further ſatisfaction on this ſubject, the reader is referred to the Prefaces themſelves, as prefixed to the edition of the ΑΝΕΚΔΟΤΑ before mentioned; or to the Refutation of it by Hein. Hiſt. Jur. Civ. § 384. in which he has pointed out the principal foreign writers who have taken up the queſtion in favor of Juſtinian: and more particularly to the learned Dr. Howell, Hiſt. Mun. p. 3. c. 2. ſect. 3. § 61. ad fin. who lived not long after the publication, and ſeems to have engaged in the controverſy with equal learning and candor.

moſt to require confutation. Not one of the hiſtorians who lived near thoſe times has given the leaſt hint to juſtify ſuch a ſuppoſition: on the contrary, though Beliſarius, either through the malice of his enemies, or his own imprudence, fell into a temporary diſgrace, it is certain, from very good authority [46], that Juſtinian ſoon became ſenſible of his injuries; that he reſtored this preſerver of his country to his fortune and ſtation; and that he died, far advanced in years, in the arms of plenty, peace, and honor.

To cloſe the whole in as few words as poſſible, we ſhall now give a ſhort ſketch of the moſt ſtriking parts of this prince's conduct, which are univerſally admitted to be true both by friends and enemies, from which every reader of diſcernment will eaſily form his own judgment; as the defects of his character in no wiſe depreciate the merit of his laws.

On his firſt appearance as the deſigned ſucceſſor to the throne, he gave the public a rather unfavorable opinion of his regard for decorum; by prevailing upon his illiterate and ſuperannuated uncle to repeal ſome laws of Conſtantine and Valentinian, which, to preſerve the dignity and purity of the ſenatorian families, had forbidden all perſons of that rank to marry proſtitutes, or any other women in ſuch baſe and infamous ſtations of life [47]. This gave a licence to many mean and unequal matches; though the principal view of Juſtinian was, to enable himſelf to eſpouſe a woman of the ſame low and diſreputable occupation; which was ſtill more extraordinary, as he was then at a time of life when, generally ſpeaking, men are paſt the age of being martyrs to love, and too young to dote. Indeed it has been univerſally allowed, that this lady, whoſe name was Theodora, was poſſeſſed of ſuch a bewitching delicacy of features, animated with ſuch an ex-

[46] Cedrenus, inter Hiſt. Byzant. p. 370, &c. an author of acknowledged veracity.

[47] C. 5. 5. 7. et ib. tit. 27. 1. which were repealed accordingly by C. 5. 4. 23.

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quiſite wit and ſprightly converſation, that, however reprehenſible his choice may appear to thoſe whoſe judgment is regulated by the cold phlegm of diſcretion, it muſt be left to ſuch as have quicker feelings of that tender and delicate paſſion, to decide in what degree it will admit of an excuſe. The conſequence of this union, however, was certainly to be lamented; as his daily increaſing attachment to a woman of an ambitious and aſpiring temper ſometimes betrayed him into acts of imprudence and injuſtice, which his own better underſtanding could not fail to condemn. He has likewiſe been accuſed of vanity, and fondneſs of adulation and popularity; which is more or leſs blameable, in conſideration of the principle from whence it flows. Irregular emotions of this kind may often proceed from an exuberant goodneſs of heart, and from too anxious a deſire of reaping that reward from the applauſe of others, which a perſon of more moderate paſſions will derive, in much greater perfection, from an inward conſciouſneſs of his own virtuous intentions.

But, taking him with all theſe defects, and with whatever elſe the chaſte tongue of hiſtoric truth can with juſtice lay to his charge, it muſt be confeſſed, that, for the courſe of a long reign, he governed a vaſt and heterogeneous mixture of people with mildneſs and equity; that he protected them with his arms; adorned their provinces with magnificent edifices, chiefly dedicated to the ſervice of the true religion: that he recovered very wide and extenſive regions, which had been long alienated, eſpecially the antient capital of the empire; and that the laws, which he collected and methodized with ſo much care and wiſdom, not only contributed to a more equal and regular adminiſtration of juſtice within the limits of the Roman dominions, but will be a laſting bleſſing to the whole civilized part of mankind to the lateſt poſterity.

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CHAP. III.

State of Juſtinian's Laws in the Eaſt.—Alterations by Baſilius Macedo and Leo the Philoſopher.—Progreſs and Decline of them in the Weſt.—Their Revival in the twelfth Century.—A particular Inquiry into that Event.

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THE antient majeſty of the Roman empire died with Juſtinian. The very beſt of his ſucceſſors ſerved only as foils, to heighten the brilliancy of his virtues; and the remaining hiſtory diſplays a melancholy ſcene of tyranny, impolicy, tumult, and diſtreſs; with ſcarcely any ſtriking, heroic, or intereſting events, to encourage the perſeverance of an inquiſitive reader; to enlarge his underſtanding, or delight his imagination. The incomparable body of laws, which has been the late ſubject of our inquiries, was the richeſt legacy this affectionate parent could have bequeathed to his people. It comprehended every eſſential proviſion that could protect their perſons from inſults, ſecure their property, decide their diſputes, and teach them the true value of political order.

Academies.

His care to promote the ſtudy, and perpetuate the obſervance, of theſe laws, was no leſs meritorious than his judgment in framing them. Wiſely conſidering, that the beſt mode of inſtruction was that which helped to leſſen the neceſſity of much reading, he publiſhed the *Inſtitutes*, for the convenience of young beginners; and, with the aid of ſome other plain and uſeful rules [a], made the road to knowledge

[a] His inſtructions for this purpoſe are thus given to the compilers of the Digeſt: "Sed "cum vos et omnes poſtea profeſſores legi- "timæ ſcientiæ conſtitutos etiam hoc opor- "tuerat ſcire, quid et in quibus temporibus "tradi neceſſarium ſtudioſis credimus, ut et "hoc optimi et eruditiſſimi efficiantur: ideo "præſentem divinam orationem ad vos præ- "cipue

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knowledge at once eaſy, pleaſant, and expeditious. To render his plan of education ſtill more complete, and to prevent a ſcience of this great importance to the public welfare from being debaſed and corrupted by ignorant teachers, he cauſed authentic copies of his whole collection to be ſent to the two royal cities of Rome and Conſtantinople, and to Berytus in Phœnicia, in which alone he permitted them to be taught and expounded; forbidding the inſtitution of academies for the ſame purpoſe, in every other city throughout the Roman dominions; and puniſhing all ſuch as pretended to ſet themſelves up for profeſſors, with fine, and baniſhment from the places of their reſidence[2].

To all theſe he added ſome very wholeſome regulations for the behaviour of the young ſcholars, who reſorted to theſe ſeminaries of learning; ſtrictly commanding them not to waſte their time in mean or unbecoming ſports and exerciſes; not to treat their maſters and profeſſors with inſolence or diſreſpect; nor to vex, diſturb, or corrupt their own companions, and eſpecially the novitiates juſt entering upon their ſtudies; but in all things to preſerve the true ſpirit of academical diſcipline, and to hold it as a neceſſary prin-

" cipue faciendam exiſtimamus, quatenus " tam prudentia veſtra quam cæteri ante- " ceſſores, qui eandem artem in omne ævum " exercere maluerint, noſtris regulis obſer- " vatis, inclytam viam eruditionis legitimæ " poſſint ambulare." Præf. 1. D. ad Anteceſſ. The whole of his plan of ſtudy is laid down at large in this Preface, and is well worth peruſal.

[2] " Hæc autem tria volumina a nobis " compoſita tradi eis, tam in regiis urbibus, " quam in Berytienſium pulcherrima civi- " tate, quam et legum nutricem bene quis " appellet tantummodo volumus: quod jam " et a retro principibus conſtitutum eſt, et " non in aliis locis quæ a majoribus tale " non meruerint privilegium: quia audivi- " mus etiam in Alexandria ſplendidiſſima " civitate, et in Cæſarienſium, et in aliis, " quoſdam imperitos homines devagare, et " doctrinam diſcipulis adulterinam tradere, " quos ſub hac interminatione ab hoc co- " namine repellimus, ut ſi auſi fuerint in " poſterum in hoc perpetrare, et extra urbes " regias, et Berytienſium metropolim hoc " facere, denarum librarum auri pœna plec- " tentur, et rejiciantur ab ea civitate, in " qua non leges docent, ſed in leges com- " mittunt." Ib. § 7.

ciple, that the mind ſhould be firſt completely formed and inſtructed, before the tongue ſhould affect erudition [3].

State of Juſtinian's Laws in the Eaſt.

It might naturally have been expected, that a ſyſtem of laws ſo admirably digeſted, and ſo well accommodated to the general uſes of civil ſociety, would, by the mere dint of its own ſuperior merit, have commanded an univerſal obedience, and a perpetual authority. The Digeſt and Code had been tranſlated into Greek in the lifetime of Juſtinian, and probably with his own knowledge and conſent, for the convenience of the Eaſtern countries, where the Latin language was very imperfectly underſtood. The Inſtitute, however, inſtead of being tranſlated, was paraphraſed in Greek; in direct contradiction to an expreſs injunction of his own, prohibiting all verſions, except ſuch as were ſtrict and literal, leſt the true ſenſe ſhould be obſcured in a multitude of words [4]: a precaution that ſeemed more particularly neceſſary with regard to this part of the work; which, being deſigned as a ſummary, for the uſe of younger ſtudents, ought to have been kept, in a more eſpecial manner, out of all poſſible reach of variation or miſconſtruction. But, as it is ſuppoſed to have been done by Theophilus himſelf, who was principally con-

[3] "Illud vero ſatis neceſſarium conſtitutum cum ſumma interminatione edicimus, ut nemo audeat neque in hac ſplendidiſſima civitate, neque in Berytienſium pulcherrimo oppido, ex his qui legitima peragunt ſtudia, indignos et peſſimos, immo magis ſerviles, et quorum effectus injuria eſt, ludos exercere, et alia crimina vel in ipſos profeſſores, vel in ſocios ſuos, et maxime in eos qui rudes ad recitationem legum perveniunt, perpetrare: quis enim ludos appellet eos, ex quibus crimina oriuntur? hoc etenim fieri nullo patimur modo, ſed optimo ordini in noſtris temporibus et hanc partem tradimus, et toto poſtero tranſmittimus ſæculo: cum oportet prius animos, et poſtea linguas fieri eruditas." Præf. § 9. V. et. Grav. O. J. 1. 138. et Gian. 1. 10.

[4] "Hoc autem —— nobis viſum eſt —— ſancire, ut nemo neque eorum qui in præſenti juris peritiam habeant, neque qui poſtea fuerint, audeat commentarios hiſtoricos legibus adnectere: niſi tantum ſi velit eas in Græcam vocem transformare ſub eodem ordine, eademque conſequentia ſub qua et voce Romana poſitæ ſunt: hoc quod Græci κατα ποδα dicunt; —— ne verboſitas eorum aliquod legibus noſtris adferat ex confuſione dedecus." C. 1. 17. 2. 21.

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cerned in the original compoſition, the emperor, perhaps, was under no apprehenſion of its ſuffering any injury [5].

This, however, was one of the leaſt miſchiefs which happened to it; the ſucceeding princes being daily employed in corrupting its purity by new additions or alterations of their own. In the courſe of two centuries more, Baſilius Macedo entirely repealed the antient Latin originals of Juſtinian; and, out of the Greek verſions, miſerably abridged and mutilated, formed forty books, which were extended afterwards to ſixty, by his ſon Leo, ſurnamed the Philoſopher. The reaſons aſſigned by the writers of that age for theſe innovations are, that Baſilius, finding the laws now reduced to a ſtate of great confuſion and obſcurity, was determined to remedy the evil, by abrogating thoſe that were grown obſolete; by taking away all ſuperfluities; and reducing the remainder into a narrower compaſs [6].

Laws of Baſilius Macedo, A. D. 867.

Leo Philoſophus, A. D. 886.

As it does not appear that Juſtinian's laws wanted any ſuch reformation, later commentators are generally agreed, that Leo's principal motive muſt have been envy of the glory of his illuſtrious predeceſſor, and the vain ambition of ſetting himſelf off to poſterity, as a lawgiver of equal fame. But, whatever was his inducement, ſo far is certain, that the collection thus promulged, under the new title of *Baſilics* [7], ſuperſeded all former publications; and were the only laws in force throughout the Eaſtern empire, till its final extinction. So entirely were the works of Juſtinian ſunk into oblivion in thoſe countries, that, among the multitude of

[5] Grav. O. J. 1. 138. Hein. Hiſt. J. C. § 401, 402, 403.

[6] Αλλα και τους πολιτικους νομους πολλην ασαφειαν και συγχυσιν εχοντας ιδων, και τουτους καλα το προσηκον προσφορως επανασωσασθαι εσπευσε· και την μεν των ανηρημενων αχρηστιαν περιειλειν, των δε κυριων ανα καθαραι το πληθος. Cedrenus, int. Hiſt. Byzant. p. 569. edit. Par. 1647.

[7] Βασιλικα, which is only a new term for *Imperial Conſtitutions*. Theſe are now generally publiſhed at the end of the "Corpus "Juris Civilis," and are to be found in the edition already mentioned.

books

books that were brought into the Weſt, after the taking of Conſtantinople by the Turks, not a ſingle volume of them was to be found, except only of the Novels[s].

Juſtinian's Laws in the Weſt.

What extent and authority they enjoyed in theſe Weſtern parts, cannot eaſily be aſcertained. But, as it is a queſtion of no ſmall importance towards a right underſtanding of the civil and political hiſtories of the modern conſtitutions of Europe, we ſhall endeavour to trace it out, as well as the imperfect accounts of thoſe obſcure and turbulent ages will admit.

Suppoſed diſcovery of the Pandects at Amalfi, A. D. 1137.

The common tradition is, that, after the extinction of the Roman power in Italy, Juſtinian's laws were entirely diſuſed and forgotten, till the twelfth century; when, in the courſe of a war between Lotharius the Second, and Roger king of Sicily, the city of Amalfi, in the neighbourhood of Naples, was beſieged and taken by the Imperialiſts; among the plunder of which was diſcovered a complete copy of the Pandects. The Piſans, who had aſſiſted the emperor with a fleet, begged this of him, and carried it away, as an ineſtimable prize, into their own country; in which it continued for near three hundred years, till their city was taken by the Florentines; who then conveyed it in great triumph to Florence, where it has remained ever ſince. The elegance and equity of theſe laws becoming the immediate objects of univerſal admiration, they were embraced by Irnerius, the moſt celebrated profeſſor of that ſcience in thoſe days, and were taught by him at Bononia, under the ſpecial encouragement of Lotharius; who, by a public edict, gave them a general authority in all the courts of juſtice within his Italian dominions; in conſequence of A. D. 1406.

[s] Duck de Author. Jur. Civ. 1. 5. Grav. O. J. 1. 138. Hopp. Præc. Jur. c. 5. Hein. Hiſt. J. C. § 401, 402, 403.

which,

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which they ſoon eclipſed the rude and imperfect ſyſtems of the Lombards [9].

The copy here ſpoken of is pretended by ſome writers to have been the very original that was drawn up by Tribonian himſelf, though much doubted by others [10]. However, it is univerſally admitted to be of very high antiquity, and is the ſtandard by which all future editions have been compared and corrected. It is now held in ſuch great eſteem, that it is never taken out to be conſulted without a proceſſion of Monks, and the performance of ſome ſuperſtitious ceremonies; and is well known under the name of the *Florentine Pandects*.

This is the ſubſtance of the ſeveral accounts given us by the more antient Italian and German writers [11]; and, upon their words, has been generally adopted by the moſt eminent lawyers and civilians in our own country [12].

The ingenious and judicious author of the *Civil Hiſtory of Naples*, well aware of the queſtion,—How a book of this kind ſhould be found in a country where Juſtinian's laws had never yet been in force?—endeavours to account for it in this manner: That Amalfi being a place of very conſiderable commerce, ſome merchant trading from thence had met with this manuſcript in a voyage to the Levant, and, on his return, had made a preſent of it to his native country [13].

But the whole of this ſtory carries upon the face of it the ſtrongeſt marks of improbability. Who this learned and generous benefactor

[9] Gravina calls them "Belluinas, atque "ferinas, immaneſque Longobardorum le-"ges." O. J. 1. 139.

[10] Mabillon de Re Diplom. lib. 5. tab. 7. p. 356.

[11] Moſh. Eccl. Hiſt. p^{t}. 2. c. 1. § 5. Grav. O. J. 140. Gian. 11. 2. By conſulting which, the reader will find all the more antient authors who have written upon the ſubject.

[12] Duck de Auth. J. C. 1. 5. 13. Selden in Flet. c. 6. § 2. et in Pref. to Tit. of Honor, p. 95. Ayliffe's Par. Jur. in Prelim. Diſc. p. 36. Harris in Præf. ad Inſt. Blackſt. Comm. Introd. § 3.

[13] Gian. 11. 2.

was,

was, or in what age he lived, is a profound ſecret. It is equally inexplicable, how he could conceive that a preſent of this kind could be a compliment to a whole nation, which neither acknowledged the power by which the laws it contained were made, nor had ſufficient underſtanding to comprehend their excellence; and which ſuffered them afterwards to lie in obſcurity, without receiving them into its own conſtitution.

Similar difficulties occur upon every other part of this ſtory. The edict of Lotharius, on which ſo much depends, has never yet been produced; and is generally conſidered as a mere invention of the Bononian profeſſors, to flatter their own vanity, and eſtabliſh the antiquity of their ſchool. It will next appear very ſtrange, that a prince of ſuch diſtinguiſhed learning, and ſo particularly zealous for the improvement of legal knowledge, ſhould have relinquiſhed a treaſure of ſo much value, at the requeſt of a few inconſiderable republicans, who were not ſubject to his power: that he ſhould have given encouragement to the ſtudy of thoſe laws, and publiſhed an edict for their obſervance, when, according to the preſent hypotheſis, this muſt have been the only copy of them then known in Europe; and that, by wilfully diveſting himſelf of all property in it, he had already loſt the opportunity of carrying his noble intention into execution.

Neither is it leſs unaccountable, that the Piſans, in return for the effectual and expenſive aſſiſtance of a fleet, ſhould have thought of ſoliciting ſo whimſical a reward as that of an obſolete body of laws, which carried no authority in Italy; and which they could not then have been ſure would have anſwered any other purpoſe, than that of filling up a vacant ſhelf in a library, or of gratifying the ſpeculative curioſity of an antiquarian: when likewiſe it is far from certain, that they had any adequate idea

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idea of its real value; or, when obtained, that they made any more uſe of it, than the people from whom it was laſt recovered.

All theſe circumſtances, when taken in one point of view, accord ſo ill with each other, that ſome very able and penetrating Civilians of later days have juſtly conſidered the whole as a fable. They particularly call in queſtion that part of it which concerns the Piſans; the fact itſelf being entirely paſſed over in ſilence by all the writers of that age in which it is ſuppoſed to have happened; and the firſt mention of it being found in the writings of a very obſcure and contemptible poet, who lived at more than two hundred years diſtance from the time[14]; and who either related it upon the authority of ſome uncertain reports, or elſe invented it himſelf, in hopes of raiſing the reputation of the work, then in poſſeſſion of his own republic.

That ſuch a manuſcript has long exiſted in the collection of thoſe illuſtrious patrons of learning, the princes of the houſe of *Medici*, is a truth well known to all the world. How it came there, or by what fortunate accident it was reſcued from oblivion, are queſtions of mere ſpeculation, not in the leaſt affecting the authenticity of

[14] Thus intitled and deſcribed: "De "Prœliis Tuſciæ caliginoſum Poema Fratris "Raynerii de Grancis Piſani, Ordinis "Prædicatorum, nunc primum ex Manu- "ſcripto Codice evulgatum." It is publiſhed by Muratori, in a large and valuable Collection of Tracts, relating to the Italian Hiſtory, intitled, "Scriptores Rerum Itali- "carum," tom. xi. p. 281. Mediol. 1727. The learned Editor calls it, in Præf. p. 285, "Caliginoſum Poema;" and the Author, "Ineptiſſimum Poetam." The fact alluded to is contained in the following obſcure lines:

"Africa Piſano quando auſpice fertur U-
"gone;
"Malfia Parthenopes datur et quando omne
"per æquor,
"Unde fuit Liber Piſanis geſtus ab illis
"Juris, et eſt Piſis Pandecta Cæſaris alti,
"Civibus adjunctis animo mente atque fideli."
Lib. 3. juxta fin. p. 314.

We are obliged to Heineccius, Hiſt. Jur. Civ. § 414. for his reference to the above work, without which we ſhould have probably remained in utter ignorance of it; and as the collection in which it is printed is much too voluminous to be in the hands of the generality of readers, it is hoped this will ſerve as an apology for troubling them with a quotation which affords ſo little real ſatisfaction.

the work itſelf, which depends upon the cleareſt evidence of antiquity, and has never yet been the ſubject of controverſy.

As no certain concluſions, therefore, can be drawn from the foregoing facts; the revival of the Civil Law, which produced ſo many material changes in the infant and imperfect conſtitutions of modern Europe, and gave ſo new an aſpect to their legal ſyſtems, muſt be ſought for in other more adequate and probable cauſes.

The practice of the Romans in propagating their laws.

The Romans had almoſt reduced conqueſt to a ſcience. Their behaviour to the vanquiſhed was uſually regulated by the degree of oppoſition they encountered; by the temper of the people, or by the ſtate of civilization in which they found them. Generally ſpeaking, they treated them all with great moderation and humanity, and did their utmoſt to alleviate the miſeries of ſubjection. Some they received with open arms, and indulged with the privileges of citizens [15]. Among others, they built cities and planted colonies, not only to ſecure their allegiance, but to reconcile them to their own manners, and to teach them to become Romans [16]. Thoſe who had already ſyſtems of laws of their own, and wiſhed not for a change, were protected in the enjoyment of them by their paternal care and attention [17].

[15] Cicero, among his other rules for waging a juſt war, gives the following account of the conduct of the antient Romans upon ſuch occaſions: "Suſcipiendæ quidem bella ſunt, ob eam cauſam, ut ſine injuria in pace vivatur. Parta autem victoria, conſervandi ſunt ii, qui non crudeles in bello, non immanes fuerunt: ut majores noſtri Tuſculanos, Æquos, Volſcos, Sabinos, Hernicos, in civitatem etiam acceperunt; at Carthaginem et Numantiam ſuſtulerunt.——In quo tantopere apud noſtros juſtitia culta eſt, ut ii, qui civitates, aut nationes devictas bello, in fidem recepiſſent, earum patroni eſſent more majorum." Off. 1. 11.

[16] Ῥωμαιοι την Ιταλιαν πολεμῳ κατα μερη χειρομενοι, γης μερος ελαμβανον, και πολεις ωκιζον, η ες τας προτερον ουσας χληρουχους απο σφων κατελεγον, και τασδε μεν αυτι φρουριων επιτουν. App. de Bello Civ. p. 353.

[17] Thus ſays Cicero of the Lacedæmonians: "Noſtri imperii præſidio diſcipli-nam ſuam, legeſque conſervant." Pro Murena, § 35.

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In other inſtances, their laws followed their arms; and the equity of the one atoned for the violence of the other. Theſe laws, when planted in countries before entirely barren of any regular principles of government, produced peculiarly happy effects: they ſubſtituted order in the room of anarchy; they enhanced the value of private property and perſonal liberty; and taught a rude and unconnected multitude the comforts of civil ſociety. From this view of facts, it is eaſy to diſcern, why many branches of theſe wiſe laws were inſenſibly preſerved, and why moſt of theſe conſtitutions were impregnated with the ſeeds of Roman juriſprudence; though they were too often overgrown and rendered fruitleſs by the weeds of barbariſm.

Theodoſian Code in the Weſt.

The reaſons, why Juſtinian's collection made ſo ſlow a progreſs in the Weſt, are too obvious to require an explanation. But the Theodoſian Code, as well as ſome of the earlier laws heretofore mentioned, having obtained a firm eſtabliſhment in thoſe parts long before the final diviſion, never totally loſt their authority, though frequently debaſed and adulterated by a mixture of a very inferior quality. The Northern ravagers, who had forced themſelves by violence into the primitive ſeat of the Roman empire, finding they had to contend with a formidable enemy, who, though much degenerated from the valour and reputation of their anceſtors, ſtill bore the name of Roman, made it their firſt object to ſecure their new acquiſitions by mere military inſtitutions and precautions, which, in time, gave riſe to the Feudal ſyſtem, ſo famous in later ages. But, when they once felt themſelves upon firmer ground, it became more neceſſary to attend to the improvement of their internal police.

Laws of the Northern nations.

It may certainly be concluded, that they entertained no great veneration for thoſe inhoſpitable regions from whence they derived

their origin; becauſe they left them with a determined reſolution never to return. Neither is it probable, for the ſame reaſon, that they had any very regular or uſeful ſchemes of government among themſelves; which, by affording protection to individuals, would have attached them to the place of their nativity, and made them overlook the other diſadvantages of climate and ſituation. Some local uſages or cuſtoms they undoubtedly brought with them; though they were very inadequate to thoſe enlarged plans of civil policy, which they found themſelves under a neceſſity of eſtabliſhing, in the more opulent and genial climes wherein they had now the good fortune to be ſettled. Theſe conſiderations naturally directed their views to thoſe inexhauſtible magazines of political wiſdom already in poſſeſſion of the vanquiſhed Romans; from whence they undertook to ſupply the defects of their own laws.

Code of Alaric, A. D. 484.

The firſt attempt of this kind was made by Alaric; who, ſucceeding to the throne of the Goths in Spain, ordered an abridgment to be formed of the three Codes of Gregorius, Hermogenes, and Theodoſius; of the Sentences of Paulus, and the Inſtitutes of Caius; all which were drawn up accordingly by Anianus [18]. But, not to derogate from his own princely dignity, as if he could not govern his ſubjects without the help of foreign laws, he directed that this Code ſhould be publiſhed in his own name, and that the laws therein contained ſhould receive their whole binding authority from himſelf.

Theodoric, A. D. 490.

Theodoric, king of the Oſtrogoths, who conquered Odoacer, king of the Heruli, and made himſelf maſter of all Italy, expreſſed a remarkable eſteem for the Roman conſtitution. This prince, whoſe

[18] A full account of this is to be found in Goth. Prol. ad Cod. Theod. c. 5. where all the authorities are very carefully collected, to which, therefore, we refer the reader and likewiſe to Gian. 3. 1. 1.

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character would have ſhined to advantage, even in a much politer age and nation, had ſpent ſome of the earlier years of his life at Conſtantinople; where he had been warmly careſſed by the emperors Leo and Zeno, and had been aſſiſted by them in his wars againſt the Heruli. Being confirmed in his new dominions, he repoſed great confidence in his lieutenant Caſſiodorus, a noble Roman, by whoſe advice he carefully preſerved the antient form of government in Rome; which, indeed, had not yet been much diſturbed or altered by preceding conquerors. The moſt important civil offices he conferred upon Romans; and permitted his Roman ſubjects to enjoy their own laws, while he governed the Goths by laws peculiar to themſelves [19].

The ſame equitable policy was, by his own dying recommendation, adopted, as far as was practicable, by his ſucceſſors. But the diſcontented Goths, unwilling to be civilized, and too fond of their own barbarous inſtitutions, rebelled againſt their ſovereigns; and, being weakened by their internal diſſenſions, were overcome by Beliſarius; who, once more, recovered the capital of the Roman empire, and reſtored a great part of thoſe territories to their original lords. This good fortune, however, was of very ſhort duration; it ended with Juſtinian; and, ſoon after his death, this city, with its dependencies, fell an eaſy prey to the victorious arms of the Lombards.

Laws of the Lombards.

Theſe unpoliſhed invaders ſoon became too ſenſible of the utility and excellence of the Roman laws, not to incorporate many of them into their own ſyſtems; which is evident from a Code of the Lombards, now extant, in three books, and clearly diſpoſed after the plan of Juſtinian's [20].

[19] Gian. 3. 2. 1—6. and the authorities by him cited.

[20] V. a book intitled, "Veteres—Renovatæ Longobardorum Leges, cum Comm. "Andreæ de Barulo. Lugd. 1600."

Several

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Several other tribes of the ſame ſort of people occaſionally adopted ſimilar practices, as they found them ſuit their own peculiar exigencies. Thus, the Franks, who are repreſented as a much more ſettled and leſs roving nation than the reſt, embraced the Roman plan of policy, and, in particular, regulated their contracts and marriages upon the principles of the Roman law [21]. Many parts of the ſame laws, eſpecially of thoſe collected by Alaric, were uſed in very early times in Narbonne Gaul, now Languedoc, and the neighbouring regions; and though the inhabitants of theſe countries were often invaded, and mixed with other rovers, particularly the Viſigoths, the Roman laws never entirely loſt their authority among them [22].

Franks.

But, after all, this reception was very partial and imperfect; being chiefly confined to the Imperial Conſtitutions, which were likewiſe much corrupted by a baſer alloy; while the more liberal and rational parts, contained in the Inſtitute and Digeſt, were neglected or forgotten.

Juſtinian, who had cauſed theſe collections to be compoſed for the general benefit of a very extenſive domain, certainly intended that all perſons ſhould know the rules by which they were to be governed. For this purpoſe, as we have already ſeen [23], he eſtabliſhed univerſities, where they were to be taught, and furniſhed them with authentic copies, by his own expreſs command; from whence it is very poſſible that many others had been made for the uſe of particular perſons. But moſt of theſe were afterwards loſt or deſtroyed by various accidents. Even thoſe that ſurvived were in few hands; their

[21] Εισι γαρ Φραγγοι ὐ νομαδες, ὡσπερ αμιλλαι τινες των βαρβαρων, αλλα και πολιτειᾳ ὡς τα πολλα χρωνται Ῥωμαικῃ, και νομοις τοις αὐτοις, και τα αλλα ὁμοιως αμφι τε τα συμβολαια και γαμους. Agath. de Reb. Geſt. Juſt. p. 13. edit. Par. 1660.

[22] Abr. Chron. de l'Hiſt. de France, par Mezeray, tom. 1. p. 240.

[23] P. 493.

true

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true value was very imperfectly underſtood; and their uſe was deſtroyed by the enſuing confuſions.

Confuſed ſtate of Europe in the middle ages.

It is well known, that, during the middle ages of Chriſtianity, the Weſtern world was diſturbed by a long ſucceſſion of war and rapine. Almoſt all the nations of the earth were then in motion; as if one general ſpirit of diſcontent agitated them all, and made them thirſt after others' lives and poſſeſſions. The very conquerors themſelves, though deſcended from the ſame ſtock, began, in time, to turn their arms againſt each other; and plundered and murdered one another with as little remorſe as they did the antient inhabitants.

Charlemagne, A. D. 800.

In the midſt of theſe ages of tumult and ignorance, appeared Charlemagne, a king of the Franks, or Germans. Having extinguiſhed the kingdom of the Lombards in Italy, he was received with vaſt pomp and ſolemnity at Rome by the Pope; who, in the affected plenitude of his power, conferred upon him the title of Emperor of the Romans, which has been the diſtinguiſhing mark of dignity with all his ſucceſſors to this day. This illuſtrious prince was endowed with a moſt exalted genius, and a capacity equally ſuited either to war or peace. As, in his own idea, he now ſupplied the place of the antient princes of Rome, he determined to reſtore the authority of the Roman laws. But, being engaged in a perpetual ſeries of wars, and unable to procure the books neceſſary for that purpoſe, he was obliged to abandon this laudable deſign; and thus the cauſe of juriſprudence, as well as of learning in general, ſtill lay under a deplorable ſtate of neglect for ſome ages to come [24].

Revival of learning in the twelfth century.

Towards the twelfth century, the violence of theſe ſtorms was conſiderably abated. The rudeneſs of the Northern peaſants began to ſoften in milder climes, and more comfortable habitations. The

[24] Duck de Aut. J. C. 1. 5. 12.

conquerors

conquerors forgot their primitive national ferocity, and the poſterity of the vanquiſhed inhabitants their bondage. They were blended with each other, and conſtituted one people, united by a common intereſt. The empire of the Franks, or Germans, had made a quick progreſs, and was become the moſt extenſive and reſpectable power in Europe. Beſide that vaſt tract of country called Germany, it reached over a conſiderable part of Gaul; and many other inferior ſtates owed to it a feudal obedience.

Add to this the growth and eſtabliſhment of Chriſtianity, which, though too much corrupted by ſuperſtition, had force enough to ſubdue the more brutal practices and groſſer manners of Paganiſm; and, by the ſuperiority of its moral excellence alone, to meliorate the hearts of its votaries; to enlighten their minds; and to make them ſuſceptible of thoſe impreſſions, which are the moſt conducive to the tranquillity and harmony of civil ſociety.

This then was a fair opportunity for learning, which is ever of an active nature, to break forth from her retirement, and to make another effort towards the recovery of her antient dominion. And we are aſſured, in fact, by the moſt credible authorities, that the ſpirit of literature did begin to diffuſe itſelf through the Weſtern world, in the eleventh century, with uncommon ardor and emulation; and that it met with a general encouragement among Chriſtian princes [25].

In this it was much aſſiſted by Diederic, or Deſiderius, Abbot of *Monte Caſſino*, who had been forced into the pontificate much againſt his own inclination, under the title of Victor the Third; and was a prelate of very conſiderable learning, honeſty, and moderation, for his time; perhaps, of too much, to be borne by a profligate,

Pope Victor III. A. D. 1086.

[25] Moſh. Eccl. Hiſt. vol. 1. p. 565. § 3.

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profligate, unprincipled, and intriguing conclave. He employed a ſhort reign of two years in many pious endeavours for the peace of the church, and for the promotion of uſeful knowledge. To this end, he erected a magnificent library at his own favorite convent, and furniſhed it with books choſen with judgment, and copied at a very great expence. Among theſe were preſerved the Inſtitutes and Novels of Juſtinian; to which the emperors of the Weſt had frequent recourſe, by way of models for the improvement of their own conſtitutions. About the ſame age likewiſe a copy or two of the Code was known to exiſt in France; though, not having then the force of law, it was too much diſregarded by the profeſſors of that ſcience [26].

But legal and political knowledge being, of all others, one of the moſt popular and intereſting, the Roman laws ſoon began to feel the benefit of this general revolution in favor of literature. Hitherto, indeed, their operation had been extremely precarious and confined. In ſome provinces they were admitted only under the mere idea of traditionary uſages, and unwritten law. In others, though incorporated with their written ſyſtems, they were ſo deformed and altered, that they loſt moſt of thoſe effects which the makers of them intended; and in none did they prevail by the virtue of their own authority, except in the ſmall exarchate of Ravenna, which, for ſeveral ages, continued part of the Grecian empire.

Univerſities.

Univerſities, and other ſeminaries of education, were, by this time, founded in moſt of the principal cities of Europe, under the patronage of the Chriſtian princes [27]; and though learning was in the firſt ſtage of infancy, ſhe even then attracted the

[26] Gian. 10. 11. and the authorities by him quoted.

[27] Moſh. ut ſup.

notice

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notice of mankind, and drew after her a great multitude of ſuitors and admirers.

Bologna.

One of the earlieſt of theſe inſtitutions was at Bologna, which was ſaid to have been founded by Theodoſius; while others aſcribe it to Mathildis, a powerful princeſs in thoſe parts of Italy [28], by whoſe particular encouragement the Law was firſt taught by a maſter of the name of Pepo. Some later writers have thought proper to treat this profeſſor with great contempt [29]; and, perhaps, deſervedly, when they judge only by compariſon. In thoſe days, before the happy invention of printing had promoted a more eaſy circulation of the materials of knowledge, the very poſſeſſion of a manuſcript was a rare and valuable acquiſition. It intitled the poſſeſſor to no ſmall degree of reſpect and conſideration, at leaſt with a claſs of novitiates, who depended upon him for the text as well as the comment; who, very poſſibly, were themſelves ſo ignorant of letters, as to have no other means of acquiring them, but with their ears, or of retaining them, but in their memories. In ſuch caſes, therefore, a clear and articulate recital of the original author; an occaſional explication of an obſcure paſſage; or any other attempt to inculcate the meaneſt rudiments of literature; inſtead of cenſure, juſtly demanded the applauſe and encouragement of every liberal mind.

Pepo the firſt profeſſor.

Irnerius, A. D. 1128.

But the reputation of the Bononian chair was ſoon eſtabliſhed by Irnerius, a German; who, having ſtudied at Conſtantinople, returned and ſettled at Ravenna, where he ſoon diſtinguiſhed himſelf as a man of ſuch extenſive learning, that he was invited to Bologna, by the united voice of the moſt reſpectable inhabitants. In this

[28] Hopp. Præc. Jur. C. § 4, 5. Grav. O. J. 1. 143.

[29] Hein. Hiſt. Jur. Civ. § 415. Grav. ut ſup.

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city he firſt opened a ſchool of philoſophy; when a mere grammatical diſpute happening to ariſe among the juriſts, concerning the meaning of a particular word, he was tempted to apply himſelf to the ſtudy of the law; in which he acquired ſo great ſkill, that he ſoon eclipſed the humble profeſſor of that ſcience. His ſtudies were chiefly confined to the Code, Inſtitutes, and Novels of Juſtinian, thoſe being the only parts of that collection then known in Italy. Upon theſe he wrote comments, and likewiſe abridged and arranged them according to the order of the Code, ſo as to ſhew at one view in what points they agreed or differed.

Where the Digeſt lay concealed all this while, is not ſo eaſy to ſay; though it is certainly a matter of wonder, that this, which contained the moſt pure and refined parts of the whole Roman laws, and the moſt important maxims of univerſal juriſprudence, ſhould at this time be ſo utterly neglected in a country for whoſe uſe it was originally compiled [30]. Though Juſtinian had taken every poſſible precaution to preſerve the knowledge of it in its original purity, by inſtituting academies, and preſcribing a method by which it was to be taught, yet was it too ſoon diſregarded, even in Conſtantinople itſelf.

In Rome, indeed, it ſuffered a much harder fate, by the ravages of the barbarous nations of the North; though ſome parts of it ſtill exiſted, as it were by accident, in the Weſt, eſpecially in the ſouthern provinces of France. In theſe it appears to have been known about the tenth and eleventh centuries; to have been occaſionally uſed by Burchardus, Biſhop of Worms; and, after him,

[30] This obſervation will have greater force in the words of the very learned Neapolitan Civilian: "Ma la più bella parte, ch'era "quella delle Pandette, ed ove racchiudeſi "il candore, e la pulitezza delle leggi Ro"mane, era a noi molto più naſcoſta, e rara "la notizia." Gian. II. 2.

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by Ivo, Biſhop of Chartres, who laid the foundation of the firſt part of the Canon Law; afterwards digeſted and publiſhed by Gratian the Monk, under the title of *Decretum*, in the pontificate of Eugenius the Third [31]. A. D. 1150.

The numerous difficulties which learning had to combat with in the days of its infancy, frequently called for the protection of the ruling power; and fortunately found a noble and munificent patron in the perſon of Frederic Barbaroſſa. This emperor, by the advice of his nobility, prelates, and other officers of ſtate, publiſhed a very liberal edict for the benefit and ſecurity of ſtudents, of whatever faculty, reſorting to their reſpective places of education; in which the lawyers have the honor of being mentioned with peculiar marks of his eſteem [32]; and of being conſidered as the main pillars of orderly government, with equal reference to every object of it, as well ſpiritual as temporal. Frederic Barbaroſſa, A. D. 1158.

After this view of the ſtate of the Roman Laws upon the continent, it will not be improper to conclude the whole, with a ſummary account of their progreſs in Great Britain. State of the Roman Laws in Britain.

This iſland, though in thoſe days ſituated at the real extremity of the known world, did not eſcape the all-coveting eye of the Roman power; and, after many vigorous ſtruggles for the ſpace of more than one hundred and thirty years, was forced to yield to the ſupe-

[31] Gian. 7. 2. Hopp. Præc. Jur. c. 8. § 14—19. Duck de Aut. J. C. 1. 7. 1—5. Seld. ad Flet. c. 6.

[32] "Omnibus qui cauſa ſtudiorum peregrinantur, *et maxime divinarum atque ſacrarum legum profeſſoribus*, hoc noſtræ pietatis beneficium indulgemus, ut ad loca, in quibus literarum exercentur ſtudia, tam ipſi, quam eorum nuncii, veniant, et in eis ſecure habitent. Dignum namque exiſtimamus, ut cum omnes bona facientes noſtram laudem et protectionem mereantur, quorum ſcientia totus illuminatur mundus, et ad obedientiam Deo, et nobis ejus miniſtris, vita ſubjectorum informatur, quadam ſpeciali dilectione ab omni injuria defendamus." This edict is ſubjoined to C. 4. 13. 5. Hein. Hiſt. J. C. § 416.

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rior arms of the virtuous and excellent Julius Agricola[33]. From that period ſhe became a favorite object of the Roman princes; ſome of the greateſt of whom viſited her in perſon, received her under their immediate protection, and erected ramparts to ſecure her from the incurſions of the ſavage Caledonians. Thus, fortunately ſubject to a maſter who ſtudied her intereſt, ſhe exchanged the barbarous uſages and arbitrary dictates of the Druids, for the mild and rational laws of the Romans. She cultivated their language, adopted their arts, intermixed with their blood; and continued in this ſtate of happy union, till the Romans, no longer able to defend themſelves, were obliged to leave her a prey to the Scots, Picts, Saxons, and ſuch other fierce and rapacious invaders: a deſertion, which was lamented in the moſt feeling and pathetic ſtrains by the defenceleſs Britons[34].

Though the Roman Laws, which had univerſally prevailed for near four centuries[35], gradually loſt their force, from the frequent change and ſucceſſion of their conquerors, it cannot be doubted that many of them ſtill continued to exiſt, under the idea of traditionary cuſtoms, though the knowledge of their real origin was utterly loſt. As the new inhabitants of this iſland had fewer connexions with the continent, and had many different and ſingular ſchemes of civil policy in view, it is no wonder that they ſhould have been leſs acquainted with, and conſequently have had leſs reſpect for, thoſe valuable collections of Theodoſius and Juſtinian, which were not compiled till after their diſunion[36].

Revival of the Roman Laws in England in the reign of Stephen.

To all appearance, therefore, the Roman Law was entirely unknown in this country for the ſpace of ſeven hundred years. But,

[33] Tac. in Vit. J. Agric.
[34] Duck de Aut. J C. 2. 8. 1—10.
[35] Seld. in Flet. 4.
[36] Seld. ad Flet. 7. 1.

in

in the reign of King Stephen, Vacarius, a Lombard, who had been educated in the ſchool at Bononia, came over to England, and opened a courſe of lectures at Oxford, where he was attended by a vaſt concourſe of auditors, both rich and poor. The beauty of its compoſition, the extenſiveneſs of its deſign, and the ſound principles of philoſophy and policy with which it abounded, ſoon put to ſhame the dull ſcholaſtic learning of the monkiſh drones of that age. The eccleſiaſtics, trembling at the thoughts of being rouſed from their long repoſe of indolence and ignorance, immediately grew jealous of the reputation which this new ſcience had gained, among the younger and more liberal inquirers into rational learning; and, as prejudice is ever of a malicious temper, they exerted their intereſt to obtain an edict from the king for its ſuppreſſion.

In due time, however, under the more liberal and auſpicious reign of Henry the Second, proper juſtice was done to its merits. The former envious oppoſition, inſtead of retarding, rather quickened its progreſs. Some of the clergy of higher rank, and more enlarged underſtandings, entered upon the ſtudy of it with great aſſiduity and ſucceſs. Among theſe, by the advice of Theobald, archbiſhop of Canterbury, was the famous Thomas Becket, who had already been a pupil of Irnerius; and, having afterwards united in his own perſon the two higheſt offices both of the church and the law, introduced it into the Court of Chancery, which has ever ſince been fundamentally governed by its rules. In a ſhort courſe of time, other writers on juridical ſubjects, pleaſed with the good ſenſe and ſyſtematic method of Juſtinian's books, began to digeſt their own works under ſimilar forms; many of which are extant at this day, and are deſervedly conſidered as the original and ſtanding

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oracles of the Common Law of England; though they much oftener deliver their precepts in the conciſe, nervous, and perſuaſive language of thoſe venerable fathers of Roman juriſprudence, Paulus, Ulpian, and Papinian.

From the foregoing accounts of the ſudden and general revival of this long-neglected ſcience, it is evident that an event, ſo important in its conſequences, could never have been owing to ſuch a trifling accident, as the diſcovery of a loſt volume; but to that laudable ſpirit of literary inquiry which now began to pervade the modern nations of Europe. The copies of this excellent work, calculated for more peaceable times, and more regular conſtitutions, were now gradually brought forth out of duſt and obſcurity; and were admired, ſtudied, and imitated, by all thoſe who beſt underſtood the true principles of regular policy. They found a very hearty reception from moſt of the Chriſtian princes, who borrowed ſuch of them as were beſt calculated to ſupply the defects of their own laws: and they were ſtill more eagerly embraced by the clergy, in whoſe hands the infant learning of the times was, as yet, chiefly engroſſed; though not with ſo good an effect, or ſo honeſt a deſign. It muſt indeed be confeſſed, that monks and other eccleſiaſtics were the chief perſons who then aſpired to the character of ſcholars, or men of buſineſs in the civil departments of the ſtate; from which abſurd and incoherent mixture of law and theology, aroſe a motley and amphibious monſter; a lawyer too much of a prieſt, and a prieſt too much of a lawyer, to do credit to either profeſſion.

The Church of Rome, which always aſſumed a dictatorial power over the conſciences of her votaries, adopted Juſtinian's works as her model; and garbled their treaſures, in order to compile that monſtrous

monſtrous and heterogeneous maſs of ſpiritual juriſprudence, now well known by the name of the *Canon Law*; by the force of which, ſhe uſurped, and ſo long maintained, an abſolute power over every temporal prince in Chriſtendom. By perpetually corrupting theſe purer ſources of civil policy, and by perverting and miſapplying its maxims, ſhe has ſullied the fair character of the Roman Law in general; and cauſed it to be ſuſpected of maintaining doctrines, which the learned and liberal authors of it deſpiſed and abhorred.

Having now traced the progreſs of this famous ſyſtem of Laws through a ſucceſſion of near two thouſand years, we ſhall humbly take leave of our readers for the preſent; hoping that, in due time, we ſhall be able to fulfil the remainder of our deſign, which will open a much wider field of entertaining and intereſting diſquiſition.

FINIS.

